

European Master's Degree in Human Rights and Democratisation
Academic Year 2004/2005

Université Libre de Bruxelles

***The World Bank, Human Rights and Oil:
The Role of the World Bank as a Lender and Moral
Guarantor Demonstrated on the Chad – Cameroon
Petroleum Development and Pipeline Project***

Georg Huber-Grabewarter

Supervisors

Benoît Frydman and Ludovic Hennebel

Brussels, 12.07.2005

Table of Contents

<i>Table of Contents</i>	ii
<i>List of Abbreviations</i>	iv
<i>Abstract</i>	1
<i>Introduction</i>	2
CHAPTER I – The World Bank’s Relationship to Human Rights	6
I. 1. The Bank’s Official Position to Human Rights and the Bank’s Policy Framework	8
I. 1. 1. The Bank’s Interpretation of the Political Prohibition Clause in the Articles of Agreement	8
I. 1. 2. The Distinction Between Economic, Social and Cultural Rights and Civil and Political Rights	10
I. 1. 3. The Bank’s Policy Framework and Human Rights	12
I. 2. Arguments Against the Restrictive Interpretation of the Bank’s Mandate	15
I. 2. 1. The Rights-Based Approach to Development and Bank Practice	17
I. 2. 2. Human Rights as Economic Issues	18
I. 2. 3. The “erga omnes” Character of Human Rights	20
I. 2. 4. The Operational Policy on Environmental Assessment	22
I. 3. Human Rights Obligations of the World Bank	23
I. 3. 1. Human Rights Obligations Stemming from External Rules	23
1. 3. 1. 1. The Bank as an International Legal Subject	23
I. 3. 1. 2. Respect, Protect, Fulfil?	26
I. 3. 2. Human Rights Obligations Stemming from Treaties entered into by the Bank	28
I. 3. 2. 1. Relationship Agreements	28
I. 3. 2. 2. Loan Agreements and International Responsibility	29
I. 4. The Legal Possibilities to Hold the Bank Accountable	30
I. 4. 1. Human Rights Monitoring Bodies, the Role of the I.C.J. and Jurisdictional Immunity	30
I. 4. 2. The World Bank Inspection Panel	31

I. 4. 2. 1. The Procedure in front of the Panel _____	32
I. 4. 2. 2. The Impact of Panel Investigations on Bank Projects and the Bank _____	33
I. 4. 2. 3. Shortcomings _____	36
<i>Chapter II – The Case of the Chad-Cameroon Petroleum Development and Pipeline Project</i> _____	39
II. 1. The Participation of the World Bank in the Project _____	39
II. 1. 1. Logistics of the Project _____	39
II. 1. 2. Criticism by several Non-Governmental Organisations _____	41
II. 2. The Exploitation of Oil: Boon or Harm for the Population? _____	42
II. 2. 1. The “Oil Curse” _____	42
II. 2. 2. The Investment in Countries with a Low Human Rights Record _____	43
II. 2. 3. The “Two Speed Project” _____	45
II. 3. The Two Inspection Panel Decisions and the Accountability Gap _____	48
II. 3. 1. The Chadian Claim – Breaking New Grounds? _____	48
II. 3. 2. The Cameroonian Claim _____	53
II. 3. 3. The Accountability Gap _____	55
<i>Chapter III – Proposals for Reforms</i> _____	56
III. 1. A Human Rights Policy is Indispensable _____	57
III. 2. Recommendations for a Reform of the Inspection Panel _____	60
<i>Conclusion</i> _____	63
<i>Annex – Inspection Panel Cases</i> _____	66
<i>Bibliography</i> _____	74

List of Abbreviations

AoA	Articles of Agreement
ATCA	Alien Tort Claims Act
BP	Bank Procedure
CAO	Compliance Advisor Ombudsman
CAPECE	Cameroon Petroleum Environment Capacity Enhancement
CED	Centre for Environment and Development
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
C.f.	Compare
COTCO	Cameroon Oil Transport Company
CRC	Convention on the Rights of the Child
DERT	Development Effectiveness Remedy Team
EBRD	European Bank for Reconstruction and Development
ECHR	European Court of Human Rights
ECJ	European Court of Justice
ECMG	External Compliance Monitoring Group
ECOSOC	United Nations Economic and Social Council
Ed(s).	Editor(s)
E.g.	For example
EPE	Environmental Panel of Experts
ESC rights	Economic, Social and Cultural rights
EU	European Union
FESP	Forest and Environment Sector Program
GA	General Assembly of the United Nations
GP	Good Practice
IAG	International Advisory Group

IBRD	International Bank for Reconstruction and Development
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
I.C.J.	International Court of Justice
ICSID	International Centre for the Settlement of Investment Disputes
IDA	International Development Association
IFC	International Finance Corporation
IFI	International Financial Institution
ILO	International Labour Organisation
IMF	International Monetary Fund
IO	International Organisation
MIGA	Multilateral Investment Guarantee Agency
MNC	Multinational Corporation
NATO	North Atlantic Treaty Organisation
NGO	Nongovernmental Organisation
UNHCHR	United Nations High Commissioner for Human Rights
OD	Operational Directive
OED	Operations Evaluation Department
OMS	Operational Manual Statement
OP	Operational Policy
OPEC	Organisation of Petroleum Exporting States
PNDP	National Participatory Development Program
P.	Page
Para(s).	Paragraph(s)
Res.	Resolution
TNC	Transnational Corporation
TOTCO	Tchad Oil Transport Company

UDHR	Universal Declaration of Human Rights
U.N.	United Nations
U.N.D.P.	United Nations Development Programme
UNESCO	United Nations Educational, Scientific and Cultural Organisation
UNICEF	United Nations Children's Fund
WHO	World Health Organisation

Abstract

This paper argues that the World Bank has to be more forthcoming with respect to human rights. The paper argues that the Bank's position to be prohibited by its constituent document to adopt a general human rights policy and to take the human rights record of a borrowing country into account when deciding to finance is legally untenable. Moreover, the paper argues that the adoption of such a policy is not only a matter of discretion for the Bank, but a matter of compliance with its international obligations. Such human rights obligations can be mainly deduced from the Bank's status as an international legal subject and as a specialized agency of the United Nations and oblige the Bank to respect and, to some extent, also to protect human rights. The paper also argues that, although the Bank has established the so-called Inspection Panel, the legal possibilities to hold the Bank accountable in the case its activities have adverse effects on the livelihood of local populations remain limited. One of the main reasons for this is that the Board of Executive Directors, which disposes of the final decision power whether any and which remedial steps will be taken, is an institution incapable of providing negatively-affected people with effective remedies. By focusing on the Chad-Cameroon Pipeline Project, the paper argues that the consideration of the human rights record of a borrowing country and the adoption of a general human rights policy are of immense significance. Moreover, it will be argued that the Bank cannot overtake a "moral guarantor" role in large infrastructure projects without ensuring that negatively affected people have sufficient possibilities for redress. To overcome shortcomings in the Bank's developmental approach, the paper proposes the adoption of a comprehensive human rights policy and a reform of the Inspection Panel.

Introduction

One by-product of the accelerating globalisation process¹ of our time is that international organisations have acquired significance for third world States and peoples that they never possessed before.² In this sense, also international organisations with a financial and development mandate, such as the World Bank Group³, have largely expanded their functions in, and impacts on, all spheres of international affairs.⁴ The Bank, as the world's most powerful development agency, can be even seen as being at the forefront of this process because of its "unmatched institutional resources and pioneering role in establishing policy frameworks designed to protect the poor and the environment"⁵. In practice, Bank activities affect the lives of millions of people and it is the most vulnerable, the poor living in developing countries that are mostly affected since it is upon those countries that need to use the financing resources that the Bank can impose certain requirements.⁶ Moreover, through structural adjustment lending⁷ and its role as policymakers, meaning that the Bank imposes

¹ In general, globalisation is a contested term and there is no accepted definition of it. However, it is widely accepted that "it is foremost an economic process." See Robert McCorquodale, *Globalization and Human Rights*, in « Human Rights Quarterly », vol. 21, 1999, pp. 735-766, at p. 737. In this sense, "economic globalisation" means "a process associated with increasing economic openness, growing economic interdependence, and deepening economic integration between countries in the world economy." See Deepak Nayyar, *Towards Global Governance*, in Deepak Nayyar (ed.), *Governing Globalization*, Oxford, Oxford University Press, 2002, pp. 3-18, at p. 6.

² See B. S. Chimni, *International Institutions Today: An Imperial Global State in the Making*, in « European Journal of International Law », vol. 15, no. 1, 2004, pp. 1-38, at p. 1.

³ The World Bank Group [hereinafter the "World Bank" or "Bank"] – established in 1944 in Bretton Woods – consists of the International Bank for Reconstruction and Development (IBRD), designed to provide relatively long-term funds for investment in productive endeavours; the International Finance Corporation (IFC), which assists developing countries through investing in private sector projects; the International Development Association (IDA), which provides loans on concessional terms to poorer developing countries that may not be eligible for loans from the IBRD; the International Centre for the Settlement of Investment Disputes (ICSID) and the Multilateral Investment Guarantee Agency (MIGA). See Mac Darrow, *Between Light and Shadow: The World Bank, the International Monetary Fund and International Human Rights Law*, Oxford/Portland, Hart Publishing, 2003, at p. 9.

⁴ See Gowlland Alexis N. Gualtieri, *The Environmental Accountability of the World Bank to Non-State Actors: Insights from the Inspection Panel*, in « British Yearbook of International Law », vol. 72, 2001, pp. 213-253, at p. 213.

⁵ See Korinna Horta, *Rhetoric and Reality: Human Rights and the World Bank*, in « Harvard Human Rights Journal », vol. 15, Spring 2002, pp. 227-243, at p. 227.

⁶ See Sia Spiliopoulou Åkermark, *International Development Finance Institutions: The World Bank and the International Monetary Fund*, in Asbjørn Eide, Catarina Krause and Allan Rosas (eds.), *Economic, Social and Cultural Rights: A Textbook – Second Revised Edition*, Dordrecht/Boston/London, Martinus Nijhoff Publishers, 2001, pp. 515-530, at p. 517.

⁷ Structural Adjustment Programs are specific programs pursued by the World Bank and the International Monetary Fund (IMF), in order to make some structural changes in borrowing countries. Their origin stems from the acknowledgment that economic policies of most African countries have not led to sound economic and social development, and therefore structural changes are needed. The World Bank defines such programs as "reforms of policies and institutions covering micro-economic (such as taxes and tariffs), macroeconomic (fiscal policy) and institutional interventions; these changes are designed to improve resource allocation, increase economic

certain conditions on member states to receive loans which enable the Bank to influence the member state's policies and priorities, the Bank's impact on the livelihood of people in developing countries is indeed considerable.⁸

However, the activities of the Bank have not always had beneficial results.⁹ The Bank has often been accused of contributing to serious adverse environmental and human rights problems in borrowing countries mostly through the funding of large infrastructure projects.¹⁰ Indeed, the failure of many Bank projects¹¹ and the negative, direct and indirect human rights impact these projects often had on the local population, demonstrated the often harmful involvement of the Bank in areas of human rights concern.¹² Consequently World Bank activities have been subject of vehement criticism during the last years.¹³ In particular, such criticism has been related to three main issues: first, the refusal of the Bank to consider an applicant's human rights record when making its credit decisions; second, the often adverse human rights and environmental impacts of Bank-financed activities; and third, the only limited possibilities to hold the Bank accountable for harms it caused.

efficiency, expand growth potential and increase resilience to shocks." See Sigrun I. Skolgy, *Structural Adjustment and Development: Human Rights – An Agenda for Change?*, in « Human Rights Quarterly », vol. 15, no. 4, November 1993, pp. 751-778, at p. 755.

⁸ See Daniel D. Bradlow, Claudio Grossman, *Limited Mandates and Intertwined Problems: A New Challenge for the World Bank and the IMF*, in « Human Rights Quarterly », vol. 17, no. 3, 1995, pp. 411-443, at p. 426.

⁹ This is not to say that local populations do not profit from some Bank-financed projects, or that caused harm is always the entirely fault of the Bank. Nonetheless, Bank activities have also often been associated with serious human rights abuses. While the Bank often characterizes these situations as "learning process", for local populations they are unacceptable and create lasting adverse impacts on their quality of life. See Fergus MacKay, *Universal Rights or a Universe Unto Itself? Indigenous Peoples' Human Rights and the World bank's Draft Operational Policy 4.10 on Indigenous Peoples*, in « American University International Law Review », vol. 17, 2002, pp. 528-624, at p. 588.

¹⁰ See Gualtieri, *supra* note 4, at p. 213.

¹¹ In 1987, for example, out of 189 projects, no less than 106 – almost 60 % – have been qualified to have either "serious shortcomings" or to be "complete failures". See Jonathan Cahn, *Challenging the New Imperial Authority: The World Bank and the Democratization of Development*, in « Harvard Human Rights Journal », vol. 6, Spring 1993, pp. 159-194, at p. 160. In 1992, the so called "Wapenhans Report" – an intern Bank report – ascertained an accelerating failure rate of Bank projects. As a result, many argued that the Bank kept "money moving through the pipeline" or "pushing money out the door", rather than emphasizing on the quality of projects. See Darrow, *supra* note 3, at p. 197.

¹² An internal Bank review of 192 projects involving involuntary resettlement between 1986 and 1993, for example, found that only a single project had satisfactorily compensated and rehabilitated the affected people. See Horta, *supra* note 5, at p. 237. C.f., e.g., also the World Bank-financed Kedung Ombo Dam project in Indonesia, which led to human rights abuses in the form of forced settlement by the Indonesian government and family programs, which coerced young families not to have children. See Halim Moris, *The World Bank and Human Rights: Indispensable Partnership or Mismatched Alliance?*, in « ILSA Journal of International & Comparative Law », vol. 4, 1997, pp. 173-200, at p. 191; concerning the negative impacts of structural adjustment programs, see, e.g., Gérard Niyungecko, *L'impact du programme d'ajustement structurel sur le respect des droits économiques et sociaux au Burundi*, in « Revue Belge de Droit International », vol. 32, no. 1, 1999, pp. 8-18.

¹³ In this sense, numerous Non-governmental Organisations (NGOs) started to exclusively focus on monitoring Bank (and also IMF) activities. C.f., for example the Bretton Woods Project, at <http://www.brettonwoodsproject.org> (last visited 20.04.2005); 50 Years is Enough Network, at <http://www.50years.org> (last visited 25.04.2005) or the Bank Information Center, at <http://www.bicusa.org> (last visited 23.05.2005), to mention only a few.

The first issue has been subject of long standing debates in the international community.¹⁴ Due to the fact that many of the developing states that borrow money from the Bank have been accused of serious human rights violations in recent years, it is clear that the consideration of the borrower's human rights record when deciding whether to finance could profoundly affect the Bank's relationship to developing nations.¹⁵ Nevertheless, the Bank itself announced in 1989 that not "much external aid will be forthcoming unless governance...improves" to include "scrupulous respect for the law and human rights at every level of government"¹⁶. Despite this and other similar statements made by the Bank,¹⁷ the Bank still interprets its constituent document – the Articles of Agreement (AoA)¹⁸, which contain a prohibition of political activities and obligate the institution to take only economic considerations into account when deciding to finance, so as to be prohibited to consider the human rights situation of a borrowing country in its lending decisions.¹⁹

The Bank has been much more forthcoming with regard to the second and third issue. In response to pressure from civil society, the Bank has started to adopt a set of binding policies, which require Bank staff and borrowers to, *inter alia*, carefully assess and minimize the risks (economic, social, and environmental) associated with projects; respect the rights and vulnerabilities of indigenous peoples; or avoid displacement of people and ensure that displaced persons improve or at least restore their standard of living.²⁰ Moreover, to ensure accountability, the Bank established in 1993 the so-called Independent Inspection Panel, which gives adversely affected people the possibility to sue the Bank for non-compliance with its own policy framework.²¹ In the human rights area, the Bank's responses to its negative impacts have been, however, more mixed. While the Bank's policy framework also offers to a certain

¹⁴ See, e.g., Victoria E. Marmorstein, *World Bank Power to Consider Human Rights in Loan Decisions*, in « The Journal of International Law and Economics », vol. 13, no. 1, 1978, pp. 113-137, who criticized the Bank's position already more than twenty years ago.

¹⁵ See John D. Ciorciari, *The Lawful Scope of Human Rights Criteria in World Bank Credit Decisions: An Interpretive Analysis of the IBRD and IDA Articles of Agreement*, in « Cornell International Law Journal », vol. 33, no. 2, 2000, pp. 331-372, at pp. 332, 333.

¹⁶ See The World Bank, *Sub-Saharan Africa: From Crisis to Sustainable Growth. A Long-Term Perspective Study*, 1989, at pp. 13, 192, quoted in Katarina Tomaševski, *International Development Finance Agencies*, in Asbjørn Eide, Catarina Krause and Allan Rosas (eds.), *Economic, Social and Cultural Rights: A Textbook*, Dordrecht/Boston/London, Martinus Nijhoff Publishers, 1995, pp. 403-414, at p. 403.

¹⁷ See below, at Chapter I. 1.

¹⁸ The Articles of Agreement are the founding document of the Bank. See Articles of Agreement of the International Bank for Reconstruction and Development, 1944, opened for signature December 27, 1945, 60 Stat. 1440, 2 U.N.T.S. 134, amended February 19 1989, available at <http://www.worldbank.org/html/extdr/backgrd/ibrd/arttoc.htm> (last visited 12.04.2005); Articles of Agreement of the International Development Association, Jan. 26, 1960, 11 U.S.T. 2284, T.I.A.S. No. 4607, 439 U.N.T.S. 249.

¹⁹ See in detail below, at Chapter I. 1.

²⁰ See Dana L. Clark, *The World Bank and Human Rights: The Need for Greater Accountability*, in « Harvard Human Rights Journal », vol. 15, Spring 2002, pp. 205-226, at p. 205.

²¹ See in detail below, at Chapter I. 4. 2.

degree human rights protection,²² the Bank has not yet adopted a general human rights policy, which could ensure that negative human rights impacts of Bank-financed projects are mitigated and could give negatively affected people the possibility to file claims against the Bank in front of the Panel, claiming that their human rights have been violated. Here, too, the Bank is “hiding behind its charter”²³ in arguing that human rights are not economic in nature and therefore do not fall under the Bank’s mandate.²⁴

In this context, the Bank decided in 2000 to participate in a controversial project in the extractive and energy industries – the Chad-Cameroon Petroleum Development and Pipeline Project.²⁵ Although the financing part of the Bank in the project is only a minor one, the Bank’s role in the project is of great importance because the oil consortium – involving Exxon Mobil (US), Chevron Texaco (US) and Petronas (Malaysia) – would not have moved forward without the participation of the Bank.²⁶ The Bank has thus agreed to overtake a “moral guarantor” role: to reduce the political risks of the other project facilitators.²⁷

Yet, the project is exemplary of all three human rights related issues introduced above. In fact, both Chad and Cameroon are countries with low human rights records. Both countries are among the most corrupt countries worldwide.²⁸ Moreover, as will be seen below, local people from Chad claimed in front of the Inspection Panel that the project has had adverse effects on their human rights.²⁹ In this sense, this paper tries to answer the following questions: Can the world’s most powerful development agency achieve its goal of reducing poverty where political rights are repressed, where freedom of expression and discussion are absent and opposition forces are persecuted?”³⁰ Is the Bank really prohibited by its constituent document to consider the human rights record of a borrowing country when deciding to finance and to

²² See below, at Chapter I. 1. 3.

²³ See Gernot Brodnig, *The World Bank and Human Rights: Mission Impossible?*, in « Carr Centre for Human Rights Policy Working Paper T-01-05 », 2001, pp. 1-21, at <http://www.krg.harvard.edu/cchrp/web%20working%20papers/BrodnigHR&WorldBank.pdf> (last visited 31.03.2005), at p. 3.

²⁴ See below, at Chapter I. 1.

²⁵ See World Bank Group Approves Support for Chad-Cameroon Petroleum and Pipeline Project, News Release No. 2000/395/AFR, June 6, 2000, at <http://www.worldbank.org/WBSITE/EXTERNAL/NEWS/0,,contentMDK:20058876~pagePK:34370~piPK:34424~theSitePK:4607,00.html> (last visited 22.04.2005).

²⁶ See World Bank and International Finance Corporation, *Chad-Cameroon: Petroleum Development and Pipeline Project, Project Appraisal Document* (19343-AFR, 2000) [hereinafter Project Appraisal Document], at p. 22; see also Genoveva Hernández Uriz, *To Lend or Not to Lend: Oil, Human Rights, and the World Bank’s Internal Contradictions*, in « Harvard Human Rights Journal », vol. 14, Spring 2001, pp. 197-233, at p. 198.

²⁷ This was of enormous importance given the fact that oil companies during the last years came under increased scrutiny due to their often harmful involvement in environmental pollution and human rights violations. See also below, at *supra* note 298. See in detail below, at Chapter II.

²⁸ See below, at Chapter II. 2. 2.

²⁹ See below, at Chapter II. 3. 1.

³⁰ See Horta, *supra* note 5, at p. 227.

adopt a general human rights policy? And, is the Panel an effective institution in order to ensure accountability of the Bank also in the area of human rights?

To answer these and similar questions, the first chapter will investigate the relationship between the Bank and human rights in general. It will examine how the Bank interprets its mandate with respect to human rights, to what extent the Bank offers in its policy framework human rights protection and whether the Bank is indeed prohibited by its Articles of Agreement to consider the human rights record of a borrowing state when deciding to finance and to adopt a general human rights policy or whether the Bank might even be obliged to do so. The final part of Chapter 1 will investigate the legal avenues through which the Bank can be held accountable. In Chapter 2, the paper will discuss the Chad-Cameroon pipeline project in order to demonstrate the consequences of the Bank's current approach to human rights in practice. Finally, in Chapter 3, the paper will propose the adoption of a general human rights policy and a reform of the Inspection Panel in order to give negatively affected people effective remedies also in the area of human rights.

CHAPTER I – The World Bank's Relationship to Human Rights

In general, the Bank's relationship to human rights can be characterized on the one hand by an increasing external awareness of negative human rights impacts of Bank activities,³¹ but, on the other hand by controversial and ambiguous responses by the Bank to these negative impacts and a consistent refusal of the Bank to adopt a general human rights policy. The Bank's refusal to adopt such a policy is based on a provision in its AoA which prohibits the Bank of any political activity and obliges the Bank to consider only economic factors in its activities.³² This part of the paper will investigate whether the Bank's interpretation of this provision is legally tenable or whether the Bank might be even obliged to consider human rights in its activities. Moreover, the final section of this chapter will discuss the legal possibilities to hold the Bank accountable in the case its activities have negative human rights impacts.

³¹ See, above at p. 3; see also MacKay, *supra* note 9, at p. 530, stating that "[a]mple evidence demonstrates that in many cases Bank policies and operations have had a negative impact on not only civil and political rights, but also on economic, social and cultural rights."

³² See in detail below, at Chapter I. 1.

First and foremost, it has to be noted that the Bank's AoA make no reference to human rights. Given the fact that the Bank was created at a time, when the international human rights system was nascent, this is not surprising.³³ Although the AoA recognize the importance of international finance for the *standard of living* and *conditions of labour*, these concerns are not formulated as human rights.³⁴ The absence of any reference to human rights can also be explained by the fact that the Bank was established at a time, in which the international order was based on two major premises: The first premise was that international organisations should have mandates that are limited to specific and defined set of problems. The World Bank's mandate in this context was limited to deal with issues of "economic development" and not with human rights.³⁵ The second premise was that the sovereign state was the most significant actor in the international realm and that international organisations should be limited in their ability to interfere in the internal affairs of their member states.³⁶

However, the world has since changed and these two premises have been challenged by the increasing number of actors at the international stage.³⁷ The sovereign power of States has declined and their ability today to manage behaviour within their borders has diminished. Most of today's problems transcend national borders and require efforts that involve both State- and non-State actors. This has led to an increasing, often negative, influence of certain non-State actors on the livelihood of people. Consequently, the human rights community started to focus its attention from the State-centred human rights regime to other global players, most prominently Transnational Corporations.³⁸ However, as already mentioned above, international institutions, with the World Bank at the forefront have also come under increased scrutiny during the last years, mainly because of their often negative or nonexistent involvement in areas of human rights concern.³⁹

³³ The first initiative after World War II to establish universal human rights protection mechanisms was the Universal Declaration of Human Rights, adopted by the UN General Assembly four years after the establishment of the Bank. See General Assembly (GA) Resolution 217 A (III), 10 December 1948.

³⁴ See Åkermark, *supra* note 6, at p. 516.

³⁵ The United Nations, for example, are able to address any issue of interest to the international community. See Bradlow, *supra* note 8, at pp. 411 *et seq.*

³⁶ C.f. in this context also the principle of non-interference in domestic affairs enshrined in Article 2 (7) UN-Charter, which was at the beginning of its existence nearly unimpeachable. See Meinhard Schröder, *Non-Intervention, Principle of*, in Rudolf Bernhardt (ed.), *Encyclopedia of Public International Law*, Amsterdam *et al.*, Elsevier, vol. 3, 1997, pp. 619-622.

³⁷ See Bradlow, *supra* note 8, at p. 412.

³⁸ The question of how to hold Transnational Corporations accountable for human rights abuses abroad has been one of the most investigated issues during the last years. See, e.g., Nicola Jägers, *Corporate Human Rights Obligations: in Search of Accountability*, Antwerp-Oxford-New York, Intersentia, 2002; David Kinley, Junko Tadaki, *The Emergence of Human Rights Responsibilities for Corporations at International Law*, in « Virginia Journal of International Law », vol. 44, no. 4, 2003, pp. 931-1024.

³⁹ See above, at p. 3.

The concerns of civil-society groups coincide with a new understanding of what constitutes development. While at the time of the establishment of the Bank, development was seen in purely economic terms,⁴⁰ there is increasing recognition in international law that development is not possible without human rights. First outlined by authors like Amartya Sen⁴¹, the interdependence of the two spheres was recognized in many international forums and the so called “rights-based approach to development” with corresponding rights and duties was formulated.⁴²

I. 1. The Bank’s Official Position to Human Rights and the Bank’s Policy Framework

The Bank, however, has responded to these developments ambiguously. Although there is increasing recognition of the relevance of human rights in the Bank’s work, the Bank does not (in contrast to many other development institutions)⁴³ have a general human rights policy. On the other hand, the World Bank has adopted a set of binding policies which, to a certain degree, deal with human rights issues. At the same time it has consistently denied that it is under any obligation to do so.⁴⁴ In general, the Bank’s approach to human rights tends to be *ad hoc*, ambiguous, controversial and to some extent arbitrary.⁴⁵

I. 1. 1. The Bank’s Interpretation of the Political Prohibition Clause in the Articles of Agreement

The Bank’s purposes – its mandate – are enshrined in Article 1 of the AoA. Article 1 of the IBRD Articles of Agreement states that the purposes of the IBRD are, *inter alia*, “to assist

⁴⁰ See, e.g., Nicholas H. Moller, *The World Bank: Human Rights, Democracy and Governance*, in « Netherlands Quarterly of Human Rights », vol. 15, no. 1, 1997, pp. 21-45, at p. 24.

⁴¹ See Amartya Sen, *Development as Freedom*, Oxford, Oxford University Press, 1999; Amartya Sen, *Freedom and Needs* (1994), in Robert McCorquadale (ed.), *Human Rights*, Dartmouth/Ashgate, Hants/Burlington, 2003, pp. 493-504.

⁴² See in detail concerning this approach, Brigitte I. Hamm, *A Human Rights Approach to Development*, in « Human Rights Quarterly », vol. 23, 2001, pp. 1005-1031; see also below, at Chapter I. 2. 1.

⁴³ UNICEF’s programming framework, for example, is guided by human rights principles. Also the European Union’s new charter for development co-operation, the Cotonou Agreement, contains several references to human rights and the Charter of the European Bank for Reconstruction and Development (EBRD) includes references to the “...fundamental principles of multiparty democracy, the rule of law, respect for human rights and market economies”. See Moller, *supra* note 40, at p. 28; Brodnig, *supra* note 23, at pp. 11, 12.

⁴⁴ See Koen De Feyter, *Self-Regulation*, in Willem van Genugten, Paul Hunt and Susan Mathews (eds.), *World Bank, IMF and Human Rights*, Nijmegen, Wolf Legal Publishers, 2003, pp. 79-137, at p. 79.

⁴⁵ See Danieal D. Bradlow, *The World Bank, the IMF, and Human Rights*, in « Transnational Law and Contemporary Problems », vol. 6, Spring 1996, pp. 48-90, at p. 51.

in the reconstruction [of Europe]⁴⁶ and development of territories of members” and to “encourag[e] international investment for the development of the productive resources of members, thereby [to] assist[...] in raising productivity, the standard of living and conditions of labour in their territories.”⁴⁷ Thus, the Bank’s mandate is to assist development efforts in its member states by providing finance for the developmental needs of borrowing countries.⁴⁸ To implement these objectives, the Bank is, according to Article IV/10 AoA, prohibited from any political activity. Article IV/10 reads:

“The Bank and its officers shall not interfere in the political affairs of any member; nor shall they be influenced in their decisions by the political character of the members concerned. Only economic considerations shall be weighed impartially in order to achieve the purposes stated in Article I”.⁴⁹

It has to be noted that, because of the absence of any definition of the terms “development” (in Article 1), “economic” and “political” (in Article IV/10), it is up to the Bank itself to decide what matters should be excluded as “political”.⁵⁰ The political prohibition mentioned in Article IV/10 has induced the Bank to interpret its mandate with respect to human rights in a restrictive manner. Although the Bank has acknowledged on numerous occasions that its approach to development is to achieve the interdependence of all elements of development (“social, structural, human, governance, environmental, macroeconomic, and financial”)⁵¹, and there is increasing recognition that development includes both economic, social and cultural rights and civil and political rights,⁵² the Bank nevertheless considers itself to be merely a specialized economic institution,⁵³ which is limited by its mandate to take only economic aspects of the international development process

⁴⁶ The reconstruction phase was, however, only of a short period, because the U.S. Marshall plan got quickly implemented and Europe developed fast. Thus, the Bank has since then concentrated on the development part of its purposes. See Sigrun I. Skogly, *The Human Rights Obligations of the World Bank and the International Monetary Fund*, London, Cavendish Publishing Limited, 2001, at pp. 15 *et seq.*

⁴⁷ See Article 1, par. I, IBRD Articles of Agreement, *supra* note 20.

⁴⁸ See Bradlow, *supra* note 45, at p. 53.

⁴⁹ Also Bank loans have to be made “with due consideration to considerations of economy and efficiency and without regard to political or other non-economic influences or considerations.” See Article III, Section 5 b, Articles of Agreement.

⁵⁰ See Ciorciari, *supra* note 15, at p. 338; Darrow, *supra* note 3, at p. 150.

⁵¹ This approach to development was established by the Bank in its “Comprehensive Development Framework”. See James A. Wolfensohn, Proposal for a Comprehensive Development Framework, 1999, at <http://www.worldbank.org/cdf>, quoted in Koen De Feyter *The International Financial Institutions and Human Rights – Law and Practice*, Antwerp, Institute of Development Policy and Management, 2002, at p. 10.

⁵² See, e.g., MacKay, *supra* note 9, at p. 548.

⁵³ The IBRD and IDA as well as IFC are specialized agencies of the United Nations. See Agreement Between the United Nations and the International Bank for Reconstruction and Development, Art. IV(2), 16 U.N.T.S. 346, 348, 1948; Agreement Between the United Nations and the International Development Association, General Assembly Resolution 1594, U.N. GAOR, 15th Sess., Supp. No. 16A, at p. 17; and Agreement Between the United Nations and the International Bank for Reconstruction and Development (Acting for and on Behalf of the International Finance Corporation) on Relationship Between the United Nations and the International Finance Corporation, Feb. 20, 1957, 265 U.N.T.S. 314 [hereinafter Relationship Agreements].

into account.⁵⁴ To avoid *ultra vires* actions,⁵⁵ all the other aspects of the development process fall outside the Bank's mandate. Since human rights matters are not economic in nature, the Bank argues, it has only a limited mandate to deal with human rights. On the one hand, the Bank emphasized that its activities do not contribute to violations of *all* human rights and contribute to the promotion and protection of economic, social and cultural rights and in a "less direct" way also of civil and political rights. In the words of the Bank:

"The Bank contributes directly to the fulfilment of many rights articulated in the Universal Declaration. Through its support of primary education, health care [...], the Bank has helped hundreds of millions of people attain crucial economic and social rights. In other areas, the Bank's contribution's are necessarily less direct, but perhaps equally significant. By helping to fight corruption, improve transparency and accountability in governance, strengthen judicial systems [...], the Bank contributes to building environments in which people are better able to pursue a broader range of human rights."⁵⁶

On the other hand, however, the Bank argues that it is prohibited by its constituent document to place the protection of civil and political rights on its agenda, because this would amount to an interference in the political affairs of sovereign states and thus lies outside of its mandate.⁵⁷

I. 1. 2. The Distinction Between Economic, Social and Cultural Rights and Civil and Political Rights

The Bank therefore distinguishes between economic, social and cultural rights on the one hand, and civil and political rights on the other hand.⁵⁸ Even with regard to the first set of rights, the Bank's approach is controversial: The Bank has never undertaken any systematic analysis of the impacts of its operations in order to support its claim to contribute to the realization of this set of rights. In fact, in many cases Bank operations have had negative

⁵⁴ See Darrow, *supra* note 3, at p. 149; Bradlow, *supra* note 45, at p. 54.

⁵⁵ International Organizations are only allowed to act within their mandates; acts that fall beyond their powers are prohibited. See De Feyter, *supra* note 51, at p. 8. The consequence of an "ultra vires" act undertaken by an international organisation would be the invalidity or nullity of the act. See Volker Epping, *Völkerrechtssubjekte*, in Knut Ipsen (ed.), *Völkerrecht*, München, C.H. Beck, 2004, pp. 55-111, at pp. 88, 89.

⁵⁶ This statement was made by the Bank in occasion of its 50 anniversary, where the Bank published a document, in which it described its relationship to human rights. See Anthony A. Gaeta, Marina Vasilara, *Development and Human Rights: The Role of the World Bank*, Washington, The World Bank, 1998, at p. 3.

⁵⁷ See Ibrahim F. I. Shihata, *The World Bank in a Changing World – Selected Essays and Lectures*, Dordrecht/Boston/London, Martinus Nijhoff Publishers, 1995, at pp. 572 *et seq.*; Horta, *supra* note 5, at p. 228. Compare also the following statement of the Bank's former counsel Shihata: "(W)hile there are limits on the possible extent to which the World Bank can be involved with human rights, especially those of civil and political nature, the bank certainly can play, and has played, within the limits of its mandate, a very significant role in promoting various economic and social rights." The statement of Shihata is quoted in Broding, *supra* note 23, at p. 14.

⁵⁸ See Clark, *supra* note 20, at p. 207.

impacts on civil and political as well as economic, social and cultural rights. The UN Committee on Economic, Social and Cultural rights stated in this context:

“Development co-operation activities do not automatically contribute to the promotion of economic, social and cultural rights. Many activities in the name of ‘development’ have subsequently been recognized as ill conceived and even counter-productive in human rights terms.”⁵⁹

The Bank has also never accepted any obligations to respect, protect, and promote these rights. It is therefore not easy to determine whether the commitment to this set of rights is indeed genuine. Moreover, there is no possibility for adversely affected people to claim violations of these rights in front of the Inspection Panel.⁶⁰

With respect to civil and political rights, the Bank uses Article IV/10 mainly to argue that it is precluded from taking into account the human rights record of a state when deciding whether or not to finance.⁶¹ Thus, even though financial support for an authoritarian government often leads to a strengthening of the repressive apparatus and to a worsening of the human rights situation in the country,⁶² the Bank nevertheless deems itself to be prohibited to consider these “political” aspects. The Bank’s official position allows a consideration of systematic abuses of civil and political rights only in certain narrowly-defined circumstances. These include: (1) when the UN Security Council adopts a binding resolution with respect to a specific country for reasons of international peace and security; (2) when international sanctions affect the economic prospects of a potential borrowing country; (3) when an escalation of armed conflict affects the viability of Bank projects and the safety of its personnel; and (4) when political phenomena clearly have adverse economic affects.⁶³ The Bank’s position is best summarized by the following official statement:

“Except in situations where the violation of human rights has created conditions hostile to effective implementation of projects or has other adverse economic consequences,

⁵⁹ See UN Committee on Economic, Social and Cultural Rights, *International Technical Assistance Measures* [Article 22 of the ICESCR (GA Res. 2200 A (XXI), 16 December 1966, entry into force on 3 January 1976)], UN Doc. R/1990/23, 1990, at paragraphs 7, 8 (a).

⁶⁰ See Pierre Klein, *Les Institutions Financières Internationales et les Droits de la Personne*, in « Revue Belge de Droit International », vol. 32, no. 1, 1999, pp. 97-114, at p. 108.

⁶¹ See *idem*, at p. 102.

⁶² See Horta, *supra* note 5, at p. 228.

⁶³ See David Gillies, *Human Rights, Governance, and Democracy: The World Bank’s Problem Frontiers*, in « Netherlands Quarterly of Human Rights », vol. 11, no. 1, 1993, pp. 3-24, at p. 17. According to the Bank’s position, human rights violations in a borrowing country must have “direct and obvious economic effect relevant to the (Bank’s) work.” To be relevant for the Bank, this economic effect must be (1) clear and unequivocal; (2) preponderant; and (3) when the issue is associated with political actions or events, the economic effect “must be of such impact and relevance as to make (it) a Bank concern.” See Darrow, *supra* note 3, at p. 154. The suspension of loans in 1998 concerning Myanmar, for example, was based only on economic considerations and not because of massive human rights violations committed by the military regime. See Klein, *supra* note 60, at p. 102.

or where there are international obligations relevant to the Bank, such as those mandated by binding decisions of the U.N. Security Council, the World Bank does not take into account the political dimensions of human rights in its lending decisions. [...] Consistent with the Articles [of Agreement], the focus of the Bank's efforts in the area of human rights is on those rights that are economic and social in nature.”⁶⁴

These are the main arguments that prevent the Bank from adopting a general human rights policy.⁶⁵

I. 1. 3. The Bank's Policy Framework and Human Rights

On the other hand, the Bank has adopted a set of binding policies for the conduct of its operations, which “offer a degree of human rights protection”⁶⁶. The Bank's operational policy framework can be divided into different categories.⁶⁷ Some of them, namely Operational Policies, Bank Procedures and Operational Directives are binding on staff, unless their wording suggests otherwise.⁶⁸ These initiatives can be titled under the name “Self-Regulation”, which can be defined as “(a) regulatory activity carried out by specific organisational units in order to avoid or eliminate incorrect behaviour within their internal structures.”⁶⁹

The main question concerning these initiatives adopted by the Bank is to what extent these policies deal with human rights. Although there is currently no operational policy on human rights and although only one of these policies uses human rights language, there are some policies that are related to human rights. The most important are the Operational Directives on Involuntary Resettlement,⁷⁰ on Indigenous Peoples,⁷¹ on Poverty Reduction⁷²

⁶⁴ See World Bank, *Governance: The World Bank's Experience*, Washington, The World Bank, 1994, at p. 53.

⁶⁵ In the words of the International Monetary Fund: “The swimmer who goes out too far may seem to be waving but is drowning. The Fund that swims out too far, even in a moral cause, will risk drowning. It will have lost the full confidence of its members. It will be less able to promote universal prosperity. The task is the Fund's moral cause.” See Klein, *supra* note 60, at p. 101.

⁶⁶ See De Feyter, *supra* note 44, at p. 102.

⁶⁷ The Bank's operational policy framework can be divided into four categories: (1) Operational Policies (OPs), which are short and focused statements that follow from the Articles of Agreement. They represent parameters for the conduct of operations and describe circumstances under which exceptions to policy are admissible and who is authorised to spell such exceptions. (2) Bank Procedures (BPs), explain the procedures and documentation Bank staff has to carry out to implement the OPs. They are supposed to ensure Bank wide consistency and quality. (3) Good Practices (GPs) contain advice and guidance on policy implementation. This includes the history of the issue, the sectoral context, analytical framework or best practice examples. (4) Operational Directives (ODs) represent a mixture of policies, procedures, and guidance. These Directives are gradually replaced by OPs/BPs/GPs, which present policies, procedures and guidance separately. The description of the operational framework of the Bank is taken from De Feyter, *supra* note 44, at pp. 94, 95; see also, Gualtieri, *supra* note 4, at p. 219.

⁶⁸ See De Feyter, *supra* note 51, at p. 14.

⁶⁹ See De Feyter, *supra* note 44, at p. 79.

⁷⁰ See Operational Directive on Involuntary Resettlement, OD 4.30, June 1990.

⁷¹ See Operational Directive on Indigenous Peoples, OD 4.20, September 1991.

⁷² See Operational Directive on Poverty Reduction, OD 4.15, December 1991.

and on Adjustment Lending Policy.⁷³ Only one of these Directives, the Directive on Indigenous Peoples, includes the term “human rights” in its wording:

“The Bank’s broad objective towards indigenous people, as for all the people in its member countries, is to ensure that the development process fosters full respect for their dignity, *human rights*⁷⁴, and cultural uniqueness. More specifically, the objective at the centre of this directive is to ensure that indigenous peoples do not suffer adverse effects during the development process, particularly from Bank-financed projects, and that they receive culturally compatible social and economic benefits”⁷⁵

However, the Bank has never defined what is implied by the reference to human rights in this directive.⁷⁶ In general, the directive’s aim is to protect indigenous peoples from adverse effects of Bank-financed projects and to ensure that these groups benefit from such projects.⁷⁷ The directive *inter alia* requires that indigenous peoples themselves can participate in discussions of projects that will affect their communities;⁷⁸ that indigenous preferences in project design will be taken into account; or to pay special attention to securing indigenous land and resource rights.⁷⁹ On May 15, 2005, however, the directive got replaced by Operational Policy/Bank Procedure 4.10 on Indigenous Peoples.⁸⁰ According to statements of the Bank, the new policy should provide greater clarity while maintaining the level of OD 4.20.⁸¹ However, in fact the new policy weakened the policy in certain important areas, particularly the participation standard.⁸² Moreover, its paragraphs 12 and 13 fail to require that indigenous ownership rights be recognized and respected. They simply require that the Borrower “takes into account” indigenous individual and collective rights, that the Borrower gives “particular attention to” indigenous rights, and, with a view to the Borrower’s legislation, “that consideration is given to establishing legal recognition of the customary or traditional land tenure systems of affected indigenous peoples or granting them long-term

⁷³ See Operational Directive on Adjustment lending policy, OD 8.60, December 1992.

⁷⁴ Emphasis added.

⁷⁵ See OD 4.20, paragraph 6.

⁷⁶ See Skogly, *supra* note 46, at p. 41.

⁷⁷ See Åkermark, *supra* note 6, at p. 525.

⁷⁸ See OD 4.20, on Indigenous People, at paragraph 8. The principle of peoples’ participation in development projects is of fundamental importance to reach the goal of sustainable development. It is thus also enshrined in Article 10 of the Rio Declaration on Environment and Development, which i.a. states that “[e]nvironmental issues are best handled with the participation of all concerned citizens”; moreover: “Human beings are at the centre of concerns for sustainable development”. See Rahmatullah Khan, *Sustainable development, human rights and good governance – a case study of India’s Narmada Dam*, Konrad Ginther, Erik Denters, Paul J.J.M. de Waart (eds.), *Sustainable Development and Good Governance*, Dordrecht/Boston/London, Martinus Nijhoff Publishers, 1995, pp. 420-428, at p. 421.

⁷⁹ See MacKay, *supra* note 9, at p. 584.; see also Kristian Myntti, *The Right of Indigenous Peoples to Participate in Development Projects*, in Martin Scheinin, Markku Suksi (eds.), *Human Rights in Development – Yearbook 2002*, Boston/Leiden, Martinus Nijhoff Publishers, 2005, pp. 225-266, at p. 260.

⁸⁰ See in detail concerning policy OP 4.10, MacKay, *supra* note 9, at pp. 582 *et seq.*

⁸¹ See *idem*, at p. 586.

⁸² See *idem*, at p. 586.

renewable rights of custodianship and use”⁸³. As MacKay pointed out, this is at odds with international human rights law, which requires that indigenous peoples’ ownership and other rights to their lands, territories and resources be legally recognized and respected, which includes titling, demarcation, and ensuring their integrity.⁸⁴

The objective of the Directive on Involuntary Resettlement is to ensure that the standard of living of resettled people improves or at least restores, while taking into account the customary land rights of indigenous groups and minorities.⁸⁵ Attention should be paid to any eventual loss of access to public services, training and employment.⁸⁶ Although human rights are not directly addressed in the directive, it is at least related to human rights. Thus, for example, one of the objectives of this Directive is to ensure that resettled people themselves can participate in discussions of projects that will affect their lives.⁸⁷ However, also here the Bank is actually taking steps to limit its responsibility for the suffering of displaced people by weakening its resettlement policy.⁸⁸ In this sense, for example, the new draft version does not require that consent be obtained prior to relocation and that cultural rights of indigenous peoples are completely disregarded.⁸⁹ Moreover, the draft version allows the Bank to finance activities involving resettlement, even resulting in significant adverse impacts on the cultural survival of, for example, indigenous peoples, if it is satisfied that all feasible project design alternatives are explored by the Borrower.⁹⁰

In the area of economic, social and cultural rights, there are two operational directives of particular interest. These are the directives on poverty reduction and on adjustment lending

⁸³ See Operational Policy on Indigenous Peoples, OP 4.10, at paragraphs 12, 13.

⁸⁴ See MacKay, *supra* note 9, at p. 590. A detailed analysis of the new version is, however, beyond the scope of the present paper. A detailed investigation of the new policy can be found in MacKay, analysing and comparing the (at that time) draft version with international human rights standards, to which (as the author argues and as will be investigated below) the Bank is obliged to and concluding that “the present draft OP 4.10 not only falls short of accounting for indigenous peoples’ human rights, it is in direct contravention of those rights.” See *idem*, at p. 582.

⁸⁵ See Åkermark, *supra* note 6, at p. 525.

⁸⁶ See OD 4.30, *supra* note 70, at paragraphs 15, 18.

⁸⁷ Similar participation clauses can be also found in other policies. C.f., e.g., the participation rights of NGOs in OP 4.15 (December 1991) on Poverty Reduction, at para. 39. See also in this context Celia R. Taylor, *The right of participation in development projects*, in Konrad Ginther, Erik Denters, Paul J.J.M. de Waart (eds.), *Sustainable Development and Good Governance*, Dordrecht/Boston/London, Martinus Nijhoff Publishers, 1995, pp. 205-229.

⁸⁸ See Clark, *supra* note 20, at p. 215.

⁸⁹ See MacKay, *supra* note 9, at p. 616.

⁹⁰ See *idem*, at p. 614. MacKay also states that the draft version directly contravenes Articles 27 of the ICCPR and Article 30 of the CRC, which, as he argues are customary international provisions and therefore binding on the Bank. Moreover, he states that the “damage caused to indigenous peoples by involuntary resettlement is by its nature irreparable and therefore must be avoided at all costs. By failing to address this issue, OP 4.10 [...] falls far short of ensuring that the ‘development process fosters full respect for the dignity, human rights and cultures of indigenous peoples’ (Draft Operational Policy 4.10, at paragraph 1, March 23, 2001)”. See *idem*, at pp. 618, 619.

policy.⁹¹ Both directives include, for example, references to health and education.⁹² However, although the directive on adjustment lending policy aims to “ensure that the benefits of policy reach the poor”,⁹³ nothing in the directive recognises “the need to ensure a minimum essential level of economic, social and cultural rights”⁹⁴, which is required by the UN Committee on Economic, Social and Cultural Rights as the minimum core obligation under the International Covenant on Economic, Social and Cultural Rights.⁹⁵

In sum, these measures clearly represent a step forward with respect to human rights concerns, and could, in theory, be used to ensure that World Bank financed projects are consistent with the standards of international law.⁹⁶ In fact, however, these references to human rights do not constitute a general human rights policy. Not all human rights issues emerging within Bank-financed projects have yet been addressed, nor have human rights implications of the Bank’s policy lending been tackled.⁹⁷ Moreover, at least the policy on indigenous peoples is directly at odds with international human rights standards. Thus, the question, which needs to be addressed, is, if the AoA really prevent the Bank from adopting a general human rights policy, including all human rights.

I. 2. Arguments Against the Restrictive Interpretation of the Bank’s Mandate

Yet, apart from the fact that the Bank’s distinction – discussed above – between economic, social and cultural rights and political rights contradicts the accepted position that all human rights are indivisible and interdependent, there are strong arguments that the Bank’s interpretation of its mandate lacks coherence. It was already mentioned that due to the absence of any definition of the terms “development”, “political” and “economic”, it is in general up to the Bank to decide which matters should be excluded as “political”.⁹⁸ However, the Bank’s

⁹¹ See De Feyter, *supra* note 51, at p. 15.

⁹² See OD 4.15 on Poverty Reduction, at paragraph 3; OD 8.60 on Adjustment lending policy, paragraph 24, which states: “Within the overall spending envelope given by the macroeconomic framework, special efforts should be made to safeguard, and increase where appropriate, budgetary allocations for basic health, nutrition, and education, including programs that benefit the most vulnerable groups among the poor. Institutional reform and development should also be supported as necessary to ensure that the benefits of policy reach the poor.”

⁹³ See OD 8.60 on Adjustment lending policy, at paragraph 24.

⁹⁴ See De Feyter, *supra* note 51, at p. 17.

⁹⁵ See UN Committee on Economic, Social and Cultural Rights, General Comment No. 3 on the nature of States parties’ obligations, 1990, at paragraph 3.

⁹⁶ See De Feyter, *supra* note 51, at p. 14.

⁹⁷ See Tomaševski, *supra* note 18, at p. 409.

⁹⁸ See above, at p. 9.

interpretation of its mandate must be in accordance with principles and methodology of applicable international law.⁹⁹ As MacKay put it:

“Shihata’s [the Bank’s former legal counsel] prioritization of the Bank’s Articles places them above all other obligations the Bank and its Members may have as members of the United Nations system and as subjects of international law, and implies that any action taken pursuant to the Articles is legitimate, irrespective of the prescriptions set forth in international law generally and international human rights law specifically. [...However, t]he Bank does not operate in a legal vacuum. It operates within the international constituent legal system and both the Bank and its constituent agreement are governed by international law, as neither the Bank nor its Articles are above the law.”¹⁰⁰

Due to the fact that the Articles of Agreement constitute treaties under international law,¹⁰¹ the meaning of these terms has to be interpreted in the light of the Vienna Convention on the Law of Treaties.¹⁰² The Vienna Convention requires that, if the use of a term in a treaty is unclear,¹⁰³ reference should be made to supplementary materials to determine the scope of Article IV/10 AoA.¹⁰⁴ In this sense, the Bretton Woods Conference is relevant to understand the meaning of the political prohibition in Article IV/10. The record of the Bretton Woods conference seemed to indicate that the participants of the Conference enacted the political prohibition to ensure that the Bank conducts its decision-making processes and operations impartially, without reference to the political character of the states involved.¹⁰⁵ Indeed, as MacKay pointed out, this “is a far cry from the wholesale rejection of many human rights expressed by the Bank”¹⁰⁶. Moreover, there are at least four other arguments why the Bank is not prohibited by its AoA to take a more proactive role with respect to human rights issues.¹⁰⁷

⁹⁹ See Ciorciari, *supra* note 15, at p. 339.

¹⁰⁰ See MacKay, *supra* note 9, at pp. 545, 546.

¹⁰¹ See Heribert Golsong, *International Bank for Reconstruction and Development*, in Rudolf Bernhardt (ed.), *Encyclopedia of Public International Law*, Amsterdam et al., Elsevier, vol. 2, 1995, pp. 1057-1064, at p. 1058.

¹⁰² See Vienna Convention on the Law of Treaties, 1155 U.N.T.S. 331, May 23, 1969. Although the World Bank predates the Vienna Convention and the interpretation of its AoA is therefore governed by international customary law that existed at the time of the establishment of the Bank, it is widely accepted that the Vienna Convention was a declaratory act of pre-existing customary law. Thus, relevant provisions in this convention are applicable also for an interpretation of the AoA. See in detail Ciorciari, *supra* note 15, at p. 340;

¹⁰³ The ordinary meaning of the terms “political”, “economic” and “development” cannot clearly answer the question if the Bank is hampered by its constituent document to consider human rights in its policies. See in detail Ciorciari, *supra* note 15, at p. 344 *et seq.*

¹⁰⁴ See MacKay, *supra* note 9, at p. 549.

¹⁰⁵ See *idem*, at p. 550; see also Bradlow, *supra* note 45, at p. 54, fn. 35. Ciorciari stated in this context that there have been three main reasons why the political prohibition in Article IV/10 got adopted: (1) the provision was included with “the Soviet Union in mind”, to ensure the participation of the Soviet Union, which was the nation the most apt to oppose an international financial institution which might discriminate against nations on the basis of their political character. (2) John M. Keynes, believed that the Bank would be most effective if operated by expert economists under conditions of minimal political influence, and thus urged to adopt Article IV/10 [Keynes stated: “If these new institutions are to win the confidence of the suspicious world, it must not only be, but appear, that their approach to every problem is absolutely objective and ecumenical, without prejudice of favour.” See Gillies, *supra* note 63, at p. 16]. And (3) the United Kingdom was concerned with respect to post-war economic sovereignty. See in detail Ciorciari, *supra* note 15, at pp. 361 *et seq.*

¹⁰⁶ See MacKay, *supra* note 9, at p. 550.

¹⁰⁷ For a detailed analysis see Darrow, *supra* note 3, at pp. 113 *et seq.*

I. 2. 1. The Rights-Based Approach to Development and Bank Practice

First, in light of the Bank's own practice and developments in international law, the AoA have to be considered as an evolving, dynamic concept.¹⁰⁸ In this sense, changing paradigms of development as well as the Bank's own practice have to be taken into account when interpreting the Bank's possibility to consider all human rights. Today, it is well established that "development represents a bundle of interlocking concepts of very broad environmental, socioeconomic, legal and institutional implications, including the protection and promotion of human rights."¹⁰⁹ This concept of development is confirmed by the UN Agendas for development¹¹⁰ and several UNDP Human development reports¹¹¹. Moreover, in 1986, the UN General Assembly proclaimed the UN Declaration on the Right to Development¹¹², which defines the right to development as an "inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social and cultural and political development, in which all human rights and fundamental freedoms can be fully realized."¹¹³ In general, the concept requires that development be directed towards fulfilling *all* human rights and converts development goals and objectives into rights, entitlements, responsibility and accountability.¹¹⁴ While the main duty holders concerning this right remain states, also international organisations have complementary responsibilities.¹¹⁵

Neither the Bank's own subsequent practice, nor official statements related to this issue disagree. In fact, the Bank has adopted several policies dealing with economic, social and cultural rights and civil and political rights. It should be noted here again that the Bank, for instance, provides rights of participation and consultation to affected communities, thereby incorporating "political" rights.¹¹⁶ Moreover, the Bank itself has confirmed that "creating the

¹⁰⁸ See Brodnig, *supra* note 23, at p. 9; Gualtieri, *supra* note 4, at p. 218.

¹⁰⁹ See De Feyter, *supra* note 51, at p. 10; Brodnig, *supra* note 23, at p. 9.

¹¹⁰ See An Agenda for Development. Report by the Secretary-General, UN doc. A/48/935, 6 May 1994.

¹¹¹ See, e.g., United Nations Development Program, *UNDP Human Development Report*, Oxford, Oxford University Press, 2000, at p. 290, cited in De Feyter, *supra* note 45, at p. 82.

¹¹² See UN General Assembly, UN Declaration on the Right to Development, Resolution 41/128, 4 December 1986.

¹¹³ [Emphasis Added]. In 1993, the right to development was confirmed in Article 10 of the Vienna Declaration and Programme of Action as an integral part of fundamental human rights. Moreover, at this conference all 171 states participating therein declared all human rights as being universal, indivisible, interdependent and interrelated. See United Nations General Assembly, *Vienna Declaration and Programme of Action*, UN Doc. A/Conf.157/23, 1993 [hereinafter Vienna Programme of Action].

¹¹⁴ See MacKay, *supra* note 9, at p. 534.

¹¹⁵ See Brodnig, *supra* note 23, at p. 11.

¹¹⁶ This is especially true for the Bank's safeguard policies on Indigenous Peoples and Involuntary Resettlement (see above, at pp. 13, 14). In the area of economic, social and cultural rights, the Bank has, for example, begun to fund development activities related to health, education, agriculture, and housing. See Bradlow, *supra* note 45, at

conditions for the attainment of human rights is a central and irreducible goal of development” or “the world now accepts that sustainable development is impossible without human rights”.¹¹⁷ Ex-World Bank President Wolfensohn recognized the importance of civil and political rights with respect to development:

“[I]f [countries] do not have good governance, if they do not confront the issue of corruption, if they do not have a complete legal system which protects human rights and contracts [...] their development is fundamentally flawed and will not last.”¹¹⁸

In this sense it can be argued that the evolving notion of what constitutes development together with the Bank’s past practice of integrating non economic issues into its work and recent statements by the Bank with respect to the concept of development suggest that there are no legal obstacles to adopting a right-based approach to development.¹¹⁹

I. 2. 2. Human Rights as Economic Issues

Second, it was already mentioned, that the Bank’s legal counsel interprets Article IV/10 AoA insofar as it allows the consideration of human rights abuses in potential borrowing countries when human rights violations in these countries have “direct and obvious” or “preponderant” economic effects. In this context it can be argued that almost all political, social and cultural issues have a direct and obvious economic effect.¹²⁰ Although, the links between human rights violations, political stability and economic development are often more varied and indirect, there is no doubt that, for example, a poor human rights record could be a significant (negative) risk factor.¹²¹ Empirical evidence demonstrated the nexus between the protection of civil and political rights and key economic variables.¹²² The most famous nexus was demonstrated by Amartya Sen:

p. 56. Note also the statement of the former legal counsel of the Bank, Shihata: “The Bank’s operations have covered numerous diverse issues including population, education, health and social security, *even though none of these issues are specifically mentioned in the Articles of Agreement* (emphasis added).” See Klein, *supra* note 60, at p. 107.

¹¹⁷ See Gaeta, *supra* note 56, at pp. 2, 3.

¹¹⁸ See Horta, *supra* note 5, at p. 228.

¹¹⁹ See Brodnig, *supra* note 23, p. 13; De Feyter, *supra* note 51, at p. 10.

¹²⁰ See Bradlow, *supra* note 45, at p. 60; see also Marmorstein, *supra* note 14, at p. 127, arguing that government repression can have a variety of economic repercussions and therefore a consideration of human rights would not violate the Bank’s Articles of Agreement. In this sense, he stated that human rights abuses might incite domestic upheaval which could jeopardize the government’s political stability and, in turn, affect its economic stability and creditworthiness. This would impede access to private foreign investment and commercial credit, a situation which is ominous for deficit economies, since their major source of financing is private capital.

¹²¹ See Brodnig, *supra* note 23, at p. 16.

¹²² See also Ernst-Ulrich Petersmann, *Time for a United Nations ‘Global Compact’ for Integrating Human Rights into the Law of Worldwide Organizations: Lessons from European Integration*, in « European Journal of International Law », vol. 13, no. 3, 2002, pp. 621-650, at p. 627, fn. 11, stating that “almost all of the countries

“[...] No substantial famine has ever occurred in a country with a democratic form of government and a relatively free press. [...] I know no exception. Famines kill millions of people in different countries in the world, but they do not kill the rulers. The kings and presidents, the bureaucrats and the bosses, the military leaders and the commanders never starve. And if there are no elections, no opposition parties, no forums for uncensored public criticism, then those in authority do not have to suffer the political consequences of their failure to prevent famines. Democracy, by contrast, would spread the penalty of famine to the ruling groups and the political leadership.”¹²³

The Bank’s practice in this context is ambiguous, arbitrary, and at times self-serving. It appears that the Bank readily justifies reinterpreting its mandate to cover areas that it wishes to address, while arguing that it is prohibited by its Articles from those that it wishes to avoid.¹²⁴ The Bank’s ambiguity of the interpretation of its mandate can be seen by its decision to include gender issues and female genital mutilation on its agenda, which the Bank considers as economic issues, while the Bank has not been willing to treat freedom of the press as an economic issue, despite the obvious economic costs associated with the lack of a free press.¹²⁵ It is indeed difficult to see how sex factors are any less “political” than human rights, as Marmorstein argues.¹²⁶ Hence, it can be concluded that nearly every issue has economic effects and that the Bank should thus treat almost all issues as economic issues. *Bradlow* mentions the following example:

“(C)onsider, a Bank Member State that decides on human rights grounds to grant all criminal defendants the right to counsel and a fair trial. *Prima facie*, this decision would appear to be a political decision that is not relevant to Bank decision-making. However, this decision, over time, can have significant and potentially contradictory economic effects. On the one hand, the resulting improvement in the member state’s human rights situation could lead to an improvement in business confidence, which could result in increased investment, increased employment, and reduced social tensions. On the other hand, the decision could lead to a reallocation of resources towards the criminal justice system, which could result in a reduction of resources available to the civil justice system [...or could have] adverse consequences for other areas of the budget. These developments could adversely affect business confidence leading to a reduction in investment, a rise in unemployment and social tensions, and a decline in the Borrower State’s ability to perform its loan obligations. In either case, it is clear that the decision will have direct economic consequences.”¹²⁷

that have enjoyed good economic performance across generations are countries that have stable democratic governments” and that “individual rights are a cause of prosperity”.

¹²³ See Sen, Freedom and Needs, *supra* note 41, at p. 497.

¹²⁴ See MacKay, *supra* note 9, at p. 548. Uriz argues in this context that the Bank has always “gone far beyond the realm of economics to affect directly the regulation of civil and political rights and institutions”, when “it has served the Bank’s interests.” Thus, the Bank expanded its mandate when prescribing neo-liberal economic policies for developing countries to intervene in genuinely political affairs of Member States. Moreover, during the Cold War, lending decisions were based on anti-communist political sympathies. In this sense, the Bank stopped lending to Chile under the regime of Salvador Allende, while it reassumed lending to the same country under Augusto Pinochet. See Uriz, *supra* note 26, at pp. 207 *et seq*; see also, Moris, *supra* note 12, at p. 198.

¹²⁵ See Bradlow, *supra* note 45, at p. 61; *idem*, *supra* note 8, at pp. 431, 432.

¹²⁶ See Marmorstein, *supra* note 14, at p. 130.

¹²⁷ See Bradlow, *supra* note 45, at p. 62.

I. 2. 3. The “erga omnes” Character of Human Rights

Third, although still controversial, there is increasing recognition that violations of fundamental human rights do not fall under the term of domestic affairs enshrined in Article 2 (7) UN-Charter.¹²⁸ Instead, they transcend a state’s autonomous jurisdiction and lie beyond the boundary of a nation’s autonomous will.¹²⁹ As Judge Weeramantry of the I.C.J. has put it:

“[T]he concept of human rights has long passed the stage when it was a narrow parochial concern between sovereign and subject. We have reached the stage, at which the human rights of anyone, anywhere, are the concern of everyone, everywhere. [...] here is not even the semblance of a suggestion in contemporary international law that such obligations amount to a derogation of sovereignty.”¹³⁰

Human rights cause *erga omnes* obligations, meaning obligations of an individual state to the international community as a whole that cannot be the subject of the state’s political affairs.¹³¹ The I.C.J. emphasized in its landmark holding – *Barcelona Traction, Light & Power Co. Ltd.* – the *erga omnes* character of the “basic rights of the human person”, in which “all states can be held to have a legal interest.”¹³² In an advisory opinion concerning the *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276*, the I.C.J. held that a violation of fundamental rights, as set out in the U.N. Charter and detailed in the UDHR, constitutes a breach of a state’s obligations towards the international community.¹³³

Moreover, the term “domestic affairs”, to which the Bank is referring to, is usually merely used to ensure a State’s liberty towards social, economic or cultural matters. The term, however, does not include a free choice of states towards their international obligations. As Klein has pointed out : “Dans aucun instrument international ne retrouvera-t-on l’affirmation ou la présomption selon laquelle la liberté de choix des États [...] comprend celle de ne pas

¹²⁸ See Helmut Steinberger, *Sovereignty*, in Rudolf Bernhardt (ed.) *Encyclopedia of Public International Law*, vol. 4, 2000, pp. 500-521, at p. 515; Schröder, *supra* note 36, at p. 622; MacKay, *supra* note 9, at p. 551; Ciorciari, *supra* note 15, at p. 358; Marmorstein, *supra* note 14, at p. 124; Manfred Nowak, *Introduction to the International Human Rights Regime*, Leiden/Boston, Martinus Nijhoff Publishers, 2003, at p. 34; Vienna Programme of Action, *supra* note 113, at para. 4, stating that “the promotion and protection of all human rights and fundamental freedoms must be considered as a priority objective of the United Nations in accordance with its purposes and principles, in particular the purpose of international cooperation. In the framework of these purposes and principles, the promotion and protection of all human rights is a legitimate concern of the international community.”

¹²⁹ See Brodnig, *supra* note 23, at p. 18.

¹³⁰ See MacKay, *supra* note 9, at p. 552.

¹³¹ See Brodnig, *supra* note 23, at p. 19.

¹³² See International Court of Justice, *Barcelona Traction, Light and Power Co., Ltd.*, Belgium v. Spain, 1970 I.C.J., at pp. 3, 32. See also Ciorciari, *supra* note 15, at p. 358, fn. 154; Marmorstein, *supra* note 14, at p. 125.

¹³³ See I.C.J. 50, 1971, at p. 16; Brodnig, *supra* note 23, at p. 19.

respecter leurs engagements internationaux.”¹³⁴ Indeed, as Klein goes on, it is somehow surprising that systematic human rights violations fall under the term of domestic affairs and “doivent à ce titre bénéficier de la protection du droit international.”¹³⁵ In fact, there are, on the contrary, suggestions that the Bank has an obligation to ensure at least in those countries that are signatory to human rights conventions that its operations do not undermine the country’s efforts to abide by these conventions.¹³⁶

Here, too, the Bank’s practice is ambiguous and arbitrary.¹³⁷ While the Bank argues it cannot consider the human rights record of a borrowing country because this would interfere with the domestic affairs, the Bank has already justified far-reaching interventions in countries through the use of loan conditionalities, which function as a law-making tool that permits the Bank to intervene in genuinely political affairs.¹³⁸ Such project loans involve “dictating sectoral policy, reshaping government priorities and funding government programs which the Bank has determined are relevant to the stated development objective”¹³⁹. Thus, states have to fulfil certain conditions in order to receive loans from the Bank. These conditions include: reform of the civil service, issues of transparency and corruption.¹⁴⁰ Moreover, structural adjustment loans, which took off in the 1980s, require even greater intervention than project loans. In this sense, such programs “quickly evolved from macroeconomic policy reform to

¹³⁴ See Klein, *supra* note 60, at p. 104.

¹³⁵ See *idem*, at p. 104.

¹³⁶ See Bradlow, *supra* note 45, at p. 63.

¹³⁷ In the beginning the Bank maintained a strict separation between economics and politics. In this sense, the Bank even ignored several U.N. resolutions, which urged the Bank to stop lending to South Africa and Portugal on human rights grounds [South Africa was condemned by the international community for its Apartheid politics and Portugal for its repressive policies in Angola and Mozambique. See U.N. General Assembly, *The Policies of Apartheid of the Government of the Republic of South Africa*, U.N. GAOR, 20th Sess., Supp. No. 14, 10 (a), U.N. Doc. A/6014, 1965, at 15; U.N. General Assembly, *Question of Territories Under Portuguese Administration*, U.N. GAOR, 22nd Sess., Supp. No. 16, 13, U.N. Doc. A/6716, 1967, at p. 47] in referring to its independence as specialized agency of the U.N. [the independence of the Bank includes two issues: first the Bank and the United Nations agreed to make no recommendations to the other organisation without “prior consultation with regard hitherto”, and secondly that the United Nations recognized to “refrain from making recommendations [...] with respect to particular loans or with respect to terms or conditions of financing by the Bank”. See Relationship Agreement between the UN and the IBRD, *supra* note 53, Art. IV (3), at 348] and arguing: “[T]he Bank’s Articles provide that the Bank and its officers shall not interfere in the political affairs of any member and that they shall not be influenced in their decisions by the political character of the members concerned. Only economic considerations are to be relevant to their decisions. Therefore, I propose to continue to treat requests for loans from these countries in the same manner as applications from other countries...I am aware that the situation in Africa could affect the economic development, foreign trade and finances of Portugal and South Africa. It will therefore be necessary in reviewing the economic condition and prospects of these countries to take account of the situation as it develops” (this was the statement of the then President of the Bank, Woods, quoted in Darrow, *supra* note 3, at p. 151). Finally, however, the Bank stopped lending to these countries, which it based on economic reasons and not on the political situation in these countries. See Uriz, *supra* note 26, at p. 202.

¹³⁸ See Uriz, *supra* note 26, at p. 208.

¹³⁹ See *idem*, at p. 208.

¹⁴⁰ See Åkermark, *supra* note 6, at p. 519.

full-fledged re-engineering of public sector policies and institutions”¹⁴¹. In some cases, the IMF and the Bank even analyze government budgets “line-by-line, to implement the cut in the government expenditure”¹⁴². Indeed, if such interferences into the domestic affairs of borrowing countries are possible, why is this not possible with respect to human rights?¹⁴³

I. 2. 4. The Operational Policy on Environmental Assessment

Finally, it is worth noting that the Bank’s approach to human rights differs significantly from that to its environmental protection mechanisms. Operational Policy 4.01 on Environmental Assessment¹⁴⁴ states that the Bank will take into account the obligations of a state “under relevant international environmental treaties and agreements.”¹⁴⁵ If a project contravenes such obligations the Bank does not support it.¹⁴⁶ Even if the state has not accepted international environmental obligations, the Bank does not finance it as long as the project contravenes applicable international environmental law, including non-binding, international environmental principles and rules.¹⁴⁷ Indeed, as MacKay pointed out: “If this is possible, with regard to environmental obligations, is there a compelling reason why human rights obligations should not be accorded equal status?”¹⁴⁸

In sum, in light of the arguments mentioned above, it is difficult for the Bank to uphold its position that it is prohibited to put the protection of civil and political rights in its policies and to argue that human rights abuses in potential borrowing countries lie outside its mandate. In reality, there is nothing in the Articles of Agreement the *hampers* the Bank from doing so.

¹⁴¹ See Brodnig, *supra* note 23, at p. 4.

¹⁴² See Uriz, *supra* note 26, at p. 208

¹⁴³ See also Jason Morgan-Foster, *The Relationship of the Structural Adjustment Programs to Economic, Social and Cultural Rights: The Argentine Case Revisited*, in « Michigan Journal of International Law », vol. 24, Winter 2003, pp. 577-646, at p. 627, fn. 273; Klein, *supra* note 60, at p. 106. Also the UN legal counsel came to a similar conclusion during the dispute between the United Nations and the Bank concerning the refusal of the Bank to consider General Assembly resolutions which urged the Bank to stop lending to South Africa and Portugal (see above at *supra* note 137). The counsel argued that the first sentence of Article IV/10 “would appear to have as its purpose the prohibition of interference in the internal political affairs of a Member State and of discrimination against a State because of its Government. [The counsel] doubted very much that the sentence was intended to relate to criteria involving international conduct of a State affecting its fundamental Charter obligations.” See Darrow, *supra* note 3, at p. 151.

¹⁴⁴ See Operational Policy on Environmental Assessment, OP 4.01, January 1999.

¹⁴⁵ See OP 4.01, at paragraph 3.

¹⁴⁶ The Bank “will not finance projects that contravene any international environmental agreement to which the member country concerned is party (...)”, cited in Klein, *supra* note 60, at p. 113.

¹⁴⁷ See OP 4.01, at paragraph 2; see also Gualtieri, *supra* note 4, at p. 221.

¹⁴⁸ See MacKay, *supra* note 9, at p. 554.

1. 3. Human Rights Obligations of the World Bank

The next part will investigate if the Bank is even *obliged* to consider a broad range of human rights in its activities and argue that the Bank indeed also has human rights obligations. Human rights obligations may derive from a number of sources. Two of these sources are: (1) norms external to the organisation; (2) and treaties entered into by the Bank.

1. 3. 1. Human Rights Obligations Stemming from External Rules

The first question that needs to be addressed to determine if the Bank has human rights obligations is whether the Bank has international legal personality. In general, international legal personality means having a personality separate from those states that established them, which includes having rights and duties under international law.¹⁴⁹

1. 3. 1. 1. The Bank as an International Legal Subject

First, the World Bank is an international organisation, “established in accordance with the procedures of international law, through the adoption, ratification and entry into force of their Articles of Agreement as treaties among states”¹⁵⁰. Whether international organisations have international legal personality has been the subject of longstanding debates.¹⁵¹ The I.C.J., held in a 1949 decision that the U.N. disposes of such personality, because such personality is indispensable to achieve the purposes of the U.N.¹⁵² The reasoning of the Court with respect to the U.N. can be applied analogously also to other international organisations.¹⁵³ Although the Bank’s constituent document does not explicitly mention such a personality,¹⁵⁴ there is little

¹⁴⁹ See Nguyen Quoc Dinh, Patrick Daillier, Alain Pellet, *Droit International Public*, Paris, Librairie Générale de Droit et de Jurisprudence, 1999, at p. 589.

¹⁵⁰ See Sigrun I. Skogly, *The Human Rights Obligations of the World Bank and the IMF*, in Willem van Genugten, Paul Hunt and Susan Mathews (eds.), *World Bank, IMF and Human Rights*, Nijmegen, Wolf Legal Publishers, 2003, pp. 45-77, at p. 46.

¹⁵¹ See Henry G. Schermers, Niels M. Blokker, *International Institutional Law*, Boston/Leiden, Martinus Nijhoff Publishers, 2003, at pp. 987, 988.

¹⁵² See International Court of Justice, *Reparations for Injuries Suffered in the Service of the United Nations*, 1949, *I.C.J. Reports*, 1949.

¹⁵³ See Schermers, *supra* note 151, at p. 990.

¹⁵⁴ Article VII, Section 2, IBRD Articles of Agreement “only” points out that the Bank has “full juridical personality”. Although this Article confirms the legal personality of the Bank, it does not necessarily mean that the Bank also enjoys international legal personality.

doubt that the Bank possesses such personality.¹⁵⁵ This can be deduced from the fact that the Bank is, to a certain extent, independent from its member states, which can partly be deduced from its AoA. The Bank is able to enter into agreements with States or other entities, acts which are, in international law theory, restricted to subjects with international legal personality. Moreover, the Bank enjoys extensive immunities and privileges which “indicate the intention of the drafters of the Articles” that the Bank “should enjoy international legal personality.”¹⁵⁶ As such, the Bank is subject of international law with rights and obligations determined by international law. As the I.C.J. pointed out in its advisory opinion on Interpretation of the agreement between the WHO and Egypt:

“[I]nternational organisations are subject of international law and, as such, are bound by any obligations, incumbent upon them under general rules of international law, under their constitutions or under international agreements to which they are parties.”¹⁵⁷

International human rights law is an integral part of international law. The most important sources of international human rights law are international conventions, customary international law and general principles of international law. Due to the fact that the Bank has not entered (and cannot enter)¹⁵⁸ into any international human rights treaty, the main sources which obligate the Bank to adhere to human rights standards are customary international law and general principles of international law.¹⁵⁹ It is widely accepted that these sources reflect obligations, from which no subject of international law is exempted.¹⁶⁰ Although the establishment of these sources relies on State practice and State legislation,¹⁶¹ their scope is not limited to States. As De Feyter put it, “[i]f it were, States would be able to evade their international obligations by creating international organisations acting with impunity.”¹⁶² Moreover, the Bank is an international organisation established by treaty and in accordance

¹⁵⁵ See MacKay, *supra* note 9, at p. 560; Gualtieri, *supra* note 4, at p. 221; De Feyter, *supra* note 51, at p. 8, fn. 6. See Skogly, *supra* note 150, at p. 46.

¹⁵⁶ See Skogly, *supra* note 46, at p. 66.

¹⁵⁷ See International Court of Justice, *Reports of Judgments, Advisory Opinions and Orders*, 1980, at paras. 89-90, cited in Skogly, *supra* note 150, at p. 47.

¹⁵⁸ See Morgan-Foster, *supra* note 143, at p. 629, fn. 278.

¹⁵⁹ Skogly argues, however, that also international human rights conventions influence the work of the Bank insofar, as „the implementation and interpretation of rights as codified in international human rights treaties are significant contributions to the development of the understanding of human rights standards.” In this sense, international human rights conventions contribute to the development of customary international law and general principles of international law “and will therefore be of importance for actors even if the individual treaty does not directly bind them. Thus, the work done by the various UN human rights committees should be taken into consideration when interpreting standards of individual human rights.” See Skogly, *supra* note 150, at p. 50.

¹⁶⁰ See *idem*, at p. 51; Skogly, *supra* note 46, at pp. 86, 87; Schermers, *supra* note 151, at pp. 997, 1002; Bradlow, *supra* note 45, at p. 63.

¹⁶¹ See De Feyter, *supra* note 51, at p. 8.

¹⁶² See *idem*, at p. 8.

with international law. The Bank thus originates in international law, which implies that the fundamental, general rules of international law also apply for the Bank.¹⁶³

It is, however, difficult to determine the exact content of the general rules of human rights law.¹⁶⁴ The I.C.J. has not yet ruled on whether the UDHR, for example, constitutes customary international law.¹⁶⁵ The opinions of legal scholars in this context differ considerably. While some argue that the UDHR in total has gained this status, others claim that only certain parts of the Declaration represent customary international law.¹⁶⁶ Most of the authors, however, agree that economic, social and cultural rights do not qualify as customary international norms.¹⁶⁷ Skogly, therefore tries to develop a new concept in this context in arguing that the minimum core content of most rights contained in the UDHR “may be of a customary law character”¹⁶⁸. Thus, for example, the minimum core content of the right to food would be not to use starvation as a method of punishment, or political gain, and would thus be of a customary law character. Other elements of this right, such as that the food available shall be culturally acceptable, might not qualify as a fundamental, customary norm.¹⁶⁹

However, since there is no list of generally accepted norms that qualify as customary international law, it is difficult to determine to what extent the Bank is obliged to abide to human rights standards stemming from general human rights rules. Moreover, the Bank remains an international economic organisation which is limited by its mandate to deal with economic issues only. The exact extent of the Bank’s human rights obligations have to be thus determined in light of its defined powers, purposes and functions as enshrined in its AoA.¹⁷⁰ Yet, the Bank’s purposes and functions are directed towards poverty alleviation and economic development, often referred to as sustainable development, the ultimate aim of which is to

¹⁶³ See *idem*, at p. 8.

¹⁶⁴ In general, customary international law results from a general and consistent practice of states followed by them from a sense of legal obligation (so called *opinion juris*). General principles of international law, for its part, stem from state practice, the practice of international organisations, through action, statements, and practice of other international actors. It is, however, not important to differ between general principles of international law and customary international law, since both institutions create obligations for the Bank and since it is difficult to distinguish the general principles from customary norms. See Skogly, *supra* note 150, at p. 52.

¹⁶⁵ The Court held, however, that the UDHR enunciates fundamental principles of International Law [See International Court of Justice, United States Diplomatic and Consular Staff in Tehran (U.S. v. Iran), 1980 I.C.J. Reports 3, at para. 42]. Moreover, in two other contentious suits, the Court ruled that at least the right to self-determination has *erga omnes* character and that all states have a legal interest in the protection of genocide and the basic rights of the human person, including protection from slavery and racial discrimination. See International Court of Justice, Case concerning East Timor, Portugal v. Australia, I.C.J. Reports, 1995, at para. 102 and International Court of Justice, Barcelona Traction, *supra* note 132, at paras. 33-34.

¹⁶⁶ See Skogly, *supra* note 47, at pp. 111 *et seq.*

¹⁶⁷ See Morgan-Foster, *supra* note 143, at p. 630, fn. 285.

¹⁶⁸ See Skogly, *supra* note 150, at p. 52.

¹⁶⁹ See *idem*, at p. 52.

¹⁷⁰ See ICJ, *supra* note 152, at paras. 179-180; see also Scherners, *supra* note 151, at p. 990; De Feyter, *supra* note 51, at p. 8.

improve the dignity and quality of human life.¹⁷¹ The essence of human rights is the dignity and wellbeing of the human person, individually and collectively.¹⁷² Moreover, the current concept of development – which the Bank has explicitly recognized – encompasses civil and political and economic, social and cultural rights.¹⁷³ Also the Bank’s activities, directly and indirectly, implicate a wide range of human rights issues.¹⁷⁴ Therefore, norms of international customary law and general principles of international should not be limited by the scope of the Bank’s powers and functions.¹⁷⁵

I. 3. 1. 2. Respect, Protect, Fulfil?

It is presently well established in international human rights law that human rights obligations are divided into three types or levels: the obligation to *respect*, to *protect* and to *fulfil*.¹⁷⁶ The next question then is how this framework fits into the Bank’s obligations. The U.N. human rights bodies mainly address these obligations to states. However, this does not mean that the division into these categories is irrelevant for the Bank. First, as Skogly puts it, it seems indeed plausible and reasonable to argue that the obligation to respect has attained the status of customary international law.¹⁷⁷ Thus, if the obligation to respect has gained such a status, the Bank too has an obligation to *respect* human rights.¹⁷⁸ The obligation to respect includes a negative obligation to make sure that the human rights situation is not deteriorating and a neutral obligation to observe human rights as they are currently implemented.¹⁷⁹ Above all, the Bank is under an obligation not to violate or to become complicit in the violation of general rules of international human rights law by actions or omissions attributable to it.¹⁸⁰ Bank’s operations should also not undermine the ability of states to abide by human rights conventions, as long as they have ratified such conventions.¹⁸¹

¹⁷¹ See MacKay, *supra* note 9, at p. 561.

¹⁷² See Vienna Programme of Action, *supra* note 113, at p. 1, “recognizing and affirming that all human rights derive from the dignity and worth inherent in the human person”.

¹⁷³ See above, at p. 18.

¹⁷⁴ See above, at pp. 12 *et seq.*

¹⁷⁵ See also MacKay, *supra* note 9, at p. 562; De Feyter, *supra* note 51, at p. 10.

¹⁷⁶ As the UN Committee on Social, Economic and Cultural Rights put it with respect to the right to adequate food: “The right to adequate food, like *any other human right* [emphasis added], imposes three types or levels of obligations on State Parties: the obligation to *respect*, to *protect* and to *fulfil*.” See UN Committee on Economic, Social and Cultural Rights, General Comment No. 12 – The Right to Adequate Food, May 1999, at paragraph 15.

¹⁷⁷ See *idem*, at p. 151.

¹⁷⁸ See also Skogly, *supra* note 150, at p. 54; Morgan-Foster, *supra* note 143, at p. 632; De Feyter, *supra* note 51, at p. 9.

¹⁷⁹ See Skogly, *supra* note 46, at p. 151.

¹⁸⁰ See De Feyter, *supra* note 51, at p. 9.

¹⁸¹ See Bradlow, *supra* note 45, at p. 63; MacKay, *supra* note 9, at p. 569.

It is difficult, however, to determine if the Bank also has an obligation to protect human rights. The obligation to protect refers to the duty of States or other obligation subjects “to prevent other individuals or groups from violating the integrity, freedom of action, of other human rights of the individual – including the prevention of infringements of his or her material resources.”¹⁸² In general, this obligation clearly falls under the obligations of States. However, as Skogly puts it: “[i]nternational legal persons cannot avoid their human rights obligations by blaming actions of other entities, if these entities are within the control of the international legal persons”¹⁸³. Thus, she argues, the Bank indeed has an obligation to protect human rights as long as it is in a position to control, through contracts or other means, the conduct of third parties,¹⁸⁴ including Transnational Corporations. Yet, in the context of the Chad-Cameroon Pipeline Project, it is indeed reasonable to argue that the Bank also has an obligation to protect, since other project facilitators would not have moved forward without the participation of the Bank, and have agreed to abide to the standards set up by the Bank. The Bank has explicitly overtaken the safeguard or moral guarantor role in the project. Moreover, it controls through contracts the conduct of other project facilitators. Thus, the Bank is indeed also obliged to protect human rights in Chad, as long as these obligations stem from general rules of international law.

Due to the fact that the obligation to fulfil, meaning, in general, that a State has “to take the measures necessary to ensure for each person within its jurisdiction opportunities to obtain satisfaction of those needs, recognised in the human rights instruments, which cannot be secured by personal efforts”¹⁸⁵, merely stems from international human rights conventions, to which the Bank is not party, this obligation seems to be, as Morgan-Foster claimed, to go too far with respect to the Bank.¹⁸⁶ However, if it is accepted that the Bank is obliged to abide to customary international law and general principles of international law, and if duties to fulfil can be deduced from these sources, then there is indeed also an obligation for the Bank to fulfil.¹⁸⁷

¹⁸² See Skogly, *supra* note 150, at p. 56.

¹⁸³ See *idem*, at p. 56.

¹⁸⁴ See *idem*, at p. 56. There are, however, also legal scholars, who argue that the Bank’s human rights obligations should be limited to the obligation of respect. Morgan-Foster, for example, claims that the duty to protect concerning IFIs goes too far “since human rights is not mentioned in the institutions’ statutes, and promotion [which includes the obligations to protect and to fulfil] of human rights will require a much more active human rights policy operation than the institutions have been set up to handle.” Therefore, “the human rights dialogue on IFIs should be limited to human rights compliance (respect), before questioning human rights promotion (protect, fulfil). Whereas the State’s duty extends from respect to protect to fulfil, the IFI is under a duty only to respect human rights.” See Morgan-Foster, *supra* note 143, at pp. 631-632.

¹⁸⁵ See Skogly, *supra* note 150, at p. 57.

¹⁸⁶ See Morgan-Foster, *supra* note 143, at p. 632. Also Skogly acknowledged that this obligation represents the “obligation level of least direct importance”. See Skogly, *supra* note 150, at p. 57.

¹⁸⁷ See also Skogly, *supra* note 150, at p. 57.

I. 3. 2. Human Rights Obligations Stemming from Treaties entered into by the Bank

Treaties entered into by the Bank are the second source of legal obligations for the Bank. Two treaties are of particular interest: the Bank's Relationship Agreements and Loan Agreements.

I. 3. 2. 1. Relationship Agreements

The World Bank is a Specialized Agency of the United Nations in the sense of Article 57 UN-Charter.¹⁸⁸ To receive this status it was necessary to enter into an agreement with the United Nations according to Article 63 UN-Charter¹⁸⁹, called the Relationship Agreement.¹⁹⁰ Although such agreements establish a close relationship to the United Nations, specialized agencies remain independent¹⁹¹. However, despite their independence, international organisations that entered into such agreements have "wide responsibilities, as defined in their basic instruments, in economic, social, cultural, educational, health, and related fields (...)", which is enshrined in Article 57 UN-Charter.¹⁹² Such agreements also include an obligation to assist in achieving the objectives of international social co-operation as defined in Article 55 UN-Charter.¹⁹³ One of the major goals of Article 55 UN-Charter is the universal respect and observance of human rights.¹⁹⁴

The fact that the Bank has entered into such an agreement induces that it is under an obligation to respect and observe the principles and purposes of the U.N. As Skogly put it, it would be contrary to the purposes of the UN "if these agreements did not indicate that such specialized agencies were bound to observe the principles and purposes of the U.N."¹⁹⁵. Thus, it is legally obligated not to conduct actions contravening the principles and purposes of the

¹⁸⁸ See above, at *supra* note 53.

¹⁸⁹ Article 63 UN-Charter requires that such Agreements are concluded by ECOSOC and enter into force after approval of the UN General Assembly. See Volker Epping, *Internationale Organisationen*, in Knut Ipsen (ed.), *Völkerrecht*, München, C.H. Beck, 2004, pp. 444-552, at pp. 496-497.

¹⁹⁰ See Relationship Agreements, *supra* note 53.

¹⁹¹ Concerning the independence of the Bank, see *supra* note 137.

¹⁹² See Skogly, *supra* note 150, at p. 48.

¹⁹³ See De Feyter, *supra* note 51, at p. 18.

¹⁹⁴ See *idem*, at p. 19.

¹⁹⁵ See Skogly, *supra* note 150, at p. 48. Moreover, she stated: "The literature contains little analysis as to the difference it makes, in terms of law, whether an organization is a specialized agency or not[, o]ne would...assume that part of the reasoning behind bringing these organizations into a formalized relationship with the UN must have been to grant them, both legally and practically, rights and obligations in relationship to the UN, which would have been different if they were not brought into this relationship through [Relationship] Agreements." See Skogly, *supra* note 46, at p. 100; see also Morgan-Foster, *supra* note 143, at p. 630, with respect to the IMF.

UN Charter, including its human rights provisions.¹⁹⁶ Therefore, the Bank has an obligation to “observe the fundamental principles of the Charter, including the promotion of respect for human rights”¹⁹⁷. In the words of the UN Committee on Economic, Social and Cultural Rights:

“In negative terms this means that the international agencies should scrupulously avoid involvement in projects which, for example, involve the use of forced labour in contravention of international standards, or promote or reinforce discrimination against individuals or groups contrary to the provisions of the Covenant, or involve large-scale evictions or displacement of persons without the provision of all appropriate protection and compensation. In positive terms, it means that, wherever possible, the agencies should act as advocates of projects and approaches, which contribute, not only to economic growth or other broadly defined objectives, but also to enhanced enjoyment of the full range of human rights.”¹⁹⁸

I. 3. 2. 2. Loan Agreements and International Responsibility

The second obligation stemming from treaties entered into by the Bank can be deduced from so-called “loan agreements”. Loan agreements are treaties concluded between a State and an international organisation, governed by international law.¹⁹⁹ The Bank concludes such agreements to achieve its purposes set out in Article 1 Articles of Agreement.²⁰⁰ These agreements are equally binding upon the borrowing state and the Bank.²⁰¹ Thus, policies adopted by the Bank which are included in such agreements become law for both parties. As a result, the Bank can insist on compliance from the Borrower, which is important if one takes into account that the standards set up by the Bank often provide more protection to beneficiaries than domestic law. On the other hand, such agreements “are also a source of legal obligation for the Bank”²⁰².

This obligation can be deduced from the principle of “due diligence”, a principle of customary international law,²⁰³ which invokes, in general, State responsibility if a State either breaches or does not perform an international obligation.²⁰⁴ The principle has been enlarged

¹⁹⁶ See also Marmorstein, *supra* note 14, at p. 131. It can be even argued that the International Bill of Human Rights, including the UDHR, the ICCPR, and the ICESCR are legal sources of the Bank’s human rights obligations as a specialized agency of the U.N. This is so, because these instruments have been *inter alia* adopted to specify the human rights provisions of the UN Charter.

¹⁹⁷ See Skogly, *supra* note 150, at p. 48. Moreover, according to Article 103 UN-Charter obligations stemming from the UN Charter take precedence over other international law obligations. Thus, the promotion of respect of human rights should be even one of the most fundamental principles in the Bank’s work.

¹⁹⁸ See UN Committee on Economic, Social and Cultural Rights, *General Comment No. 2*, 1990, UN doc. E/1990/23, Annexe III, at paragraph 6.

¹⁹⁹ See De Feyter, *supra* note 51, at p. 19.

²⁰⁰ See above at p. 9.

²⁰¹ See De Feyter, *supra* note 51, at p. 19.

²⁰² See *idem*, at p. 20.

²⁰³ See Klein, *supra* note 60, at p. 112.

²⁰⁴ See ICJ, *Corfu Channel (UK v. Albania)*, judgment of April 9, 1949, I.C.J Reports, 1949, at paras. 4, 23.

over time, and can today be understood as including an obligation of States to consider with due diligence that activities “qui se déroulent sous son contrôle ne portent pas atteinte aux droits d’un autre sujet international”²⁰⁵. If a State fails to do so, international responsibility is invoked. Although there is at present no agreed set of detailed rules of international law governing the responsibility of international organisations, the main principles of state responsibility apply *mutatis mutandis* also to international organisations in general and to the World Bank in particular.²⁰⁶ This means that if the Bank fails to implement its obligations under the loan agreements or any of the other obligations stemming from international law mentioned above, this would involve international responsibility, as long as the conduct is attributable to the Bank.²⁰⁷ Thus, the Bank is obliged that all its activities and especially its loan agreements do not involve or contribute to violations of international human rights law, even if there is no general policy on human rights.²⁰⁸

I. 4. The Legal Possibilities to Hold the Bank Accountable

Even if it is agreed that the Bank has international human rights obligations, the possibilities to hold it accountable when it violates these obligations are of a limited nature.

I. 4. 1. Human Rights Monitoring Bodies, the Role of the I.C.J. and Jurisdictional Immunity

First, there is no U.N monitoring body dealing with human rights that is currently fit to receive complaints about World Bank non-fulfilment of its human rights obligations.²⁰⁹ Second, the I.C.J. cannot deal with claims filed against the Bank because of allegedly human

²⁰⁵ See Klein, *supra* note 60, at p. 112.

²⁰⁶ See *idem*, at p. 112; De Feyter, *supra* note 51, at p. 20.; Schermers, *supra* note 151, at p. 1006.

²⁰⁷ See Knut Ipsen, *Völkerrechtliche Verantwortlichkeit und Völkerstrafrecht*, in Knut Ipsen (ed.), *Völkerrecht*, München, C.H. Beck, 2004, pp. 615-673, at p. 657; De Feyter, *supra* note 44, at p. 112. Concerning an argument that even if the conduct is not attributable to the Bank, international responsibility is invoked, see Klein, *supra* note 60, at pp. 112, 113.

²⁰⁸ See Klein, *supra* note 60, at pp. 113, 114. To hold the Bank accountable, the adoption of a human rights policy would nevertheless be a step forward. De Feyter argues in this context, that those suffering from human rights violations as a consequence of non-compliance of the Bank’s human rights policy could – although not directly invoke the loan agreement – resort to tort law. Domestic courts might “well take into account the Bank’s own professional standards as evidenced by the operational policies”. In referring to an article proposing joint responsibility of TNCs in the context of human rights abuses (see Andrew Clapham, Scott Jerbi, *Categories of Corporate Complicity in Human Rights Abuses*, in « Hastings International & Comparative Law Review », vol. 24, 2001, pp. 339-349), he argues that the concept of direct complicity (requiring international participation, but not necessarily any intention to do harm, but only knowledge of the likely harmful effects of the assistance given), primary responsibility (in this context, the Bank could be held accountable for aiding or assisting the State in the commission of a wrongful act) and silent complicity (implying the culpability for failing to exercise influence), mentioned therein, could also be applied to the Bank. See in detail De Feyter, *supra* note 51, at p. 20.

²⁰⁹ See Skogly, *supra* note 46, at p. 185.

rights abuses. In article 34 paragraph 1 of the Statute of the International Court of Justice is stated that “only States may be parties in cases before the Court”²¹⁰. The I.C.J. therefore, has only competence over contentious matters between States. Thus, individuals who feel that their human rights have been violated because of Bank financed projects cannot go directly to claim in front of the I.C.J.²¹¹ Third, international organisations in general enjoy jurisdictional immunity, which reflects a general rule of international institutional law to “enable organisations to function properly without undue interference in their affairs by States and thus ensure the independent discharge of the tasks entrusted to them”.²¹² Also the Bank enjoys such immunity in the countries in which it is operating to ensure that it can fulfil its purposes.²¹³ The primary aim of the immunity of the Bank is to give the Bank full immunity against lawsuits brought by the Borrower against the Bank in its own domestic courts originating in loan agreements to which the State is a party.²¹⁴ Thus, there is no possibility for the borrowing state to remedy violations of the agreements in front of domestic courts even if the Bank recognises internal mistakes.²¹⁵

I. 4. 2. The World Bank Inspection Panel

There is, however, one possibility to hold the Bank accountable. As a consequence of the Bank-financed Sardar Sarovar dam-project in India and the following internal and external criticism,²¹⁶ the World Bank established in 1993 the so-called Inspection Panel.²¹⁷ In general,

²¹⁰ See Statute of the International Court of Justice, Article 34.

²¹¹ For relative modest possibilities to bring human rights abuses of the Bank in front of the I.C.J., see Hutchins, Thomas, *Using the International Court of Justice to Check Human Rights Abuses in World Bank Projects*, in « Columbia Human Rights Law Review », vol. 23, no. 2, 1992, at pp. 487-525.

²¹² See De Feyter, *supra* note 51, at p. 21; Skogly, *supra* note 46, at p. 178.

²¹³ See Article VII, 3, IBRD Articles of Agreement, *supra* note 18.

²¹⁴ See De Feyter, *supra* note 51, at p. 21.

²¹⁵ However, such immunities are functional, meaning they are limited to the extent to what is necessary to achieve the purposes of the organisation. In this sense, there are legal scholars who argue that there is a presumption of absence of immunity, unless the existence of the Bank or the fulfilment of its tasks is threatened. The immunity should only go as far as the Bank can achieve its purposes set out in its Articles of Agreement. Therefore, such immunity is not applicable in situations concerning disputes of private persons, “unless they derive their claims from member states or would prevent the Bank from fulfilling the functions for which it was established”. See in detail De Feyter, *supra* note 51, at p. 21.

²¹⁶ The Narmada dam refers to a controversial Bank-financed project in India. As a response to peaceful demonstrations of local people against potential environmental costs of the project, the Indian police committed several human rights abuses. See in detail Khan, *supra* note 78, at pp. 424, 425. After these incidents the Bank agreed for the first time to set up an independent review investigating the Bank’s role in development projects. The outcome of this investigation was devastating. The report stated that the Bank had largely disregarded its policies on involuntary resettlement and environmental assessment, and had tolerated borrower’s violations of these policies, which in sum had considerable human rights and environmental consequences. The so called “Morris Commission” concluded: “We think the Sardor Sarovar Projects as they stand are flawed, that resettlement and rehabilitation of all those displaced by the Projects is not possible under prevailing circumstances, and that the environmental impacts...have not been properly considered...Moreover, we believe that the Bank shares responsibility with the borrower for the situation”. See Jonathan A. Fox, *When does Reform*

the Panel gives individuals the right to bring complaints in an international forum for alleged misconduct of an international organisation. Individuals are given direct access to the Panel if they believe they are directly and adversely affected by Bank-financed projects and that the Bank violated its own policy framework.²¹⁸ The Panel is an independent and permanent organ within the Bank's structure. It is composed of three members of nationalities of Bank member countries, nominated by the Bank's President and appointed by the Executive Directors. These members must dispose of sufficient knowledge and expertise in development,²¹⁹ as well as dispose of "an ability to deal thoroughly and fairly with the requests brought to them"²²⁰. As the first institution of its kind, it is not only innovative from an institutional viewpoint; it also provides a mechanism for increased scrutiny of the Bank's activities and as such contributes to more transparency and the promotion of sustainable development.²²¹

I. 4. 2. 1. The Procedure in front of the Panel

The Panel's procedure is more of an administrative rather than judicial nature.²²² First, "any group of two or more people"²²³ adversely affected by a Bank-financed project and who share common concerns or interest in the country where the project is located can file a claim

Policy Influence Practice? Lessons from the Bankwide Resettlement Review, in Jonathan A. Fox, David L. Brown (eds.), *The Struggle for Accountability: The World Bank, NGOs, and Grassroots Movements*, Cambridge/Massachusetts/London, MIT Press, 1998, pp. 303-344, at p. 310.

²¹⁷ The Panel was established by the Board of Executive Directors [see Resolution No. 93-10 IBRD, Resolution No. 93-6 IDA, September 22, 1993 (hereinafter "Resolution")]. After the establishment of the Panel in 1993, Panel members adopted in August 1994 operating procedures [see Inspection Panel for the IBRD and IDA, Operating Procedures as adopted by the Panel, 19 August 1994]. In 1994 the Panel started operating. See Koen De Feyter, *World Development Law: Sharing Responsibility for Development*, Antwerp/Groningen/Oxford, Intersentia, 2001, at p. 233.

²¹⁸ See Richard E. Bissel, *Recent Practice of the Inspection Panel of the World Bank*, in « American Journal of International Law », vol. 91, no. 4, October 1997, pp. 741-744, at p. 741. The Resolution expressly limits the Panel's investigation possibilities to binding internal Bank norms, namely OPs, BPs, ODs and "similar documents before these series started". See Gualtieri, *supra* note 4, at p. 233.

²¹⁹ See Laurence Boisson de Chazournes, *Access to Justice: The World Bank Inspection Panel*, in Gudmundur Alfredsson, Jonas Grimheden, Bertram G. Ramcharan and Alfred de Zayas (eds.), *International Human Rights Monitoring Mechanisms*, The Hague/Boston/London, Martinus Nijhoff Publishers, 2001, pp. 513-520, at p. 514.

²²⁰ See Gualtieri, *supra* note 4, at p. 228.

²²¹ See Chazournes, *supra* note 219, at p. 513; Kay Treakle, Jonathan Fox, Dana L. Clark, *Lessons Learned*, in Dana Clark, Jonathan Fox and Kay Treakle (eds.), *Demanding Accountability – Civil-Society Claims and the World Bank Inspection Panel*, Lanham/Boulder/New York/Oxford, Rowman & Littlefield Publishers, 2003, pp. 247-278, at p. 247.

²²² See De Feyter, *supra* note 217, at p. 234.

²²³ There is no possibility for a single person to claim violations of the policy framework of the Bank. The term "two or more people" includes "an organisation, association, society or other grouping of individuals" (thus, local NGOs are, e.g., authorised to bring such claims). A suit can also be filed by an appointed local representative acting as agent for the affected people, or, in exceptional cases, by a foreign representative acting as such an agent. Exceptional cases are defined as situations in which there is no adequate or appropriate representation in the country where the project is located, which has to be shown by the party itself and has to be agreed by the Executive Directors of the Bank. Once the Panel is authorised to investigate a project, NGOs and others can supply additional information to the Panel. See Chazournes, *supra* note 219, at p. 516.

on the grounds that the Bank has violated its own policies.²²⁴ Plaintiffs have to demonstrate that their rights or interests have been or are threatened to be directly affected by an action or an omission of the Bank (not such of the borrower) with respect to the design, appraisal, and implementation phases of a project financed by the Bank.²²⁵ After having received a request, Management is given opportunity to respond to the claims and can provide information on whether it complies with the Bank policies and procedures targeted by the complaint.²²⁶ The Panel then may recommend to the Executive Directors, if an investigation is necessary. The Board either authorizes the Panel to do so, but can also refuse the allowance of such an investigation. In the former case, the Panel carries out an investigation which may include field visits, interviews with Bank staff, and review of relevant files and then submits its report and recommendations to the Board. Management for its part has the possibility within six weeks to answer to the findings of how to bring the project into compliance with Bank policies.²²⁷ At the end, the Board decides on the basis of both Panel investigation and Management plan (often called “action plan”), whether any and which remedial steps will be taken. The final result as well the actions taken – if any – will then be sent to the parties.²²⁸

I. 4. 2. 2. The Impact of Panel Investigations on Bank Projects and the Bank

Up until 2005, the Panel received thirty-six requests.²²⁹ The claims have demonstrated that most problems occur in projects that involve high environmental and social risks, such as – for example – energy and extractive industry projects, and especially those that involve involuntary resettlement.²³⁰ Consequently, the most invoked policies are the ones on the

²²⁴ See De Feyter, *supra* note 217, at p. 234.

²²⁵ See Paragraph 12 of the Resolution. The word “project” includes projects under consideration by Bank management as well as projects already approved by the Executive Directors. See Chazournes, *supra* note 219, at pp. 517, 518.

²²⁶ See De Feyter, *supra* note 217, at p. 234; Chazournes, *supra* note 219, at p. 514.

²²⁷ See Clark, *supra* note 20, at p. 218.

²²⁸ In the past, the practice of the Panel, however, sometimes differed considerably with respect to this procedure. Therefore, in compliance with former Panel practice, the Executive Directors clarified in 1996 the Resolution, in *inter alia* stating that the Panel can – if it believes that it is necessary – also undertake “preliminary assessments” in order to decide if a full investigation is necessary [The Board’s clarification was issued on October 17, 1996 – Clarification of Certain Aspects of the Resolution Establishing the Inspection Panel (R96-204) – and should be seen as amendments of an interpretative nature to the Resolution]. In practice, Management took this issue to present remedial action plans before the Board considered the recommendation of the Panel for full investigation. Although the Board sometimes authorized the Panel to observe the action plan, mainly the fact that this practice often hampered a full investigation of the Panel, led to a second Board review prohibiting this practice and emphasizing the importance of the Panel procedure. See Chazournes, *supra* note 219, at p. 515 (the 1996 and 1999 clarifications can be found in Edward S. Ayensu, *Accountability at the World Bank: The Inspection Panel – 10 Years On*, Washington D.C., The World Bank, 2003, at pp. 140 *et seq.*).

²²⁹ See World Bank, Inspection Panel: Requests [hereinafter “Requests”], Washington D.C., The World Bank, at <http://web.worldbank.org/WBSITE/EXTERNAL/EXTINSPECTIONPANEL/0,,contentMDK:20221606~menuPK:64129250~pagePK:64129751~piPK:64128378~theSitePK:380794,00.html> (last visited, 20.06.2005); see also below Annex, at pp. 66 *et seq.*

²³⁰ See in detail Treake, *supra* note 221, at p. 248.

environment and vulnerable groups.²³¹ In most of the cases, Management tried to deny policy violations,²³² challenged claimants' eligibility and in some cases the Panel's findings. In only five cases, management acknowledged some failure to comply with its policies. This is in contrast to fourteen cases in which the Panel found that at least some of the policies invoked were violated.²³³ Management often responded in an aggressive manner to claims and had a huge influence on the board, which undermined the Panel's independence and led to animosities between Panel and management.²³⁴

Re-quests	Registered Requests	Manage-ment Denied Violations	Panel Recom-mendation for Investigation	Board Approved Investigation	Violation of at least some Policies found	Pending Cases
36	31 (some requests did not get registered for different reasons; e.g., because the claim was filed after the loan was closed).	26 (in five cases, Management acknowledged some failure to comply).	19 (six requests were found to be ineligible; in six cases, the Panel did not recommend an investigation).	16 (out of these sixteen approvals, two times the Board only approved a restricted investigation).	14 (the Panel found also in three cases in which the Board did not approve investigation evidence that at least some of the claimant's allegations of policy violations were valid).	5

Claims filed to the Panel have also demonstrated that people, who attempt to make use of the accountability mechanism made available by the Bank, sometimes have been targeted for retribution and sometimes even suffered human rights violations for occupying the political space provided by the Bank's policies.²³⁵ One example should be mentioned: Madhu Kohli,

²³¹ See Chazournes, *supra* note 219, at p. 517; Treacle, *supra* note 221, at p. 251.

²³² Up until 2005 out of thirty-six claims, management denied twenty-six times a violation. See Requests, *supra* note 229; see also World Bank, Inspection Panel Annual Report 2004, Washington D.C., The World Bank, 2004, at <http://siteresources.worldbank.org/EXTINSPECTIONPANEL/Publications/20319076/AR2003-2004.pdf> (last visited 28.06.2005).

²³³ See also below Annex, at pp. 67 *et seq.*; Requests, *supra* note 229. Although in three cases the Panel's recommendations to investigate the requests were not approved by the Board, the Panel found also in these three cases evidence that at least some of the claimant's allegations of policy violations were valid. See Treacle, *supra* note 221, at p. 254.

²³⁴ The responses of the management can be deduced from the fact that the Bank has enjoyed for long time impunity. Thus, staff, management and the board did not need to answer to sometimes disastrous results of their decisions. As a consequence staff and management as well as borrowing countries often denied wrongdoing, obstructed the truth and tried to discredit the Panel's findings. See Treacle, *supra* note 221, at pp. 254, 255.

²³⁵ See *idem*, at p. 257; Clark, *supra* note 20, at p. 207.

representative of the claimants in the Singrauli (India) project, was beaten by project contractors in the presence of four officials of the National Thermal Power Corporation (NTPC), which was designed to implement the project.²³⁶

In general, claimants have sought to receive adequate compensation for being forcibly displaced; demanded implementation of environmental protection measures; demanded restoration of their livelihoods; required to prevent threatened harm by stopping or delaying potentially destructive projects; and wanted to hold the Bank accountable for its role in causing their problems.²³⁷ The main benefits for requesters have been: the remedial action plans; visits by panel members, which facilitated the solution of some of the problems attached to the projects, and the increasing public awareness of those likely to suffer from projects.²³⁸ The cleanest outcomes have been in those situations, in which the Bank finally decided to cancel the project.²³⁹ When the projects were already implemented, however, the outcomes have been more mixed. In the Singrauli case in India, for instance, which involved various human rights abuses and environmental and social devastation, people did not regain the standard of living they had before the implementation of the project and even mourned that they lost their way of life.²⁴⁰ In the Itaparica resettlement case, the promised action plan “has been a farce”²⁴¹, and in the case of the Yacyretá Hydroelectric Project in Argentina/Paraguay, for instance, despite numerous action plans, harm was only little mitigated.²⁴²

²³⁶ See in detail Dana L. Clark, *Singrauli: An Unfulfilled Struggle for Justice*, in Dana Clark, Jonathan Fox and Kay Treakle (eds.), *Demanding Accountability – Civil-Society Claims and the World Bank Inspection Panel*, Lanham/Boulder/New York/Oxford, Rowman & Littlefield Publishers, 2003, pp. 167-190.

²³⁷ See Treakle, *supra* note 221, at p. 257.

²³⁸ See De Feyter, *supra* note 217, at p. 237.

²³⁹ This happened in the Arun dam project in Nepal (this project did not take place at all after the cancellation of the Bank; see in detail Richard E. Bissel, *The Arun III Hydroelectric Project, Nepal*, in Dana Clark, Jonathan Fox and Kay Treakle (eds.), *Demanding Accountability – Civil-Society Claims and the World Bank Inspection Panel*, Lanham/Boulder/New York/Oxford, Rowman & Littlefield Publishers, 2003, pp. 25-44.) and in the China Western Poverty Reduction Project (China announced to move forward with the project also without the participation of the Bank; see in detail, Dana L. Clark, Kay Treale, *The China Western Poverty Reduction Project*, in Dana Clark, Jonathan Fox and Kay Treakle (eds.), *Demanding Accountability – Civil-Society Claims and the World Bank Inspection Panel*, Lanham/Boulder/New York/Oxford, Rowman & Littlefield Publishers, 2003, pp. 211-246).

²⁴⁰ In this sense, affected people claimed: “What we have lost, we have not regained here. We lost more and received less. There is no comparison between life before and now. We never worried before about food running short. Earlier, all the grain and fruit was available in plenty, and we could sell extra on the market. Now, we have to buy everything, and we cannot buy enough for our family because it is too expensive. Water was in plenty, now it is scarcity. Our land had a spring, and all of the land was irrigated. We didn’t get any compensation for the loss of spring”. In this context Clark stated that “the bank failed to take responsibility for effectively remedying the situation on the ground.” And: “This case provides a graphic illustration of the human and ecological costs that are associated with the World Bank’s failure to learn from past mistakes as well as its failure to live up to its mandate of poverty alleviation.” See Clark, *supra* note 236, at pp 183 *et seq.*

²⁴¹ See Clark, *supra* note 20, at p. 219.

²⁴² In this project (concerning the construction of a dam in Argentina), the Panel stated that management had little done to follow up to ensure that its action plans were being implemented. As a consequence, the social and

Concerning the impact of Panel investigations on the Bank as an institution, the establishment of the Panel has doubtless enhanced transparency in Bank operations, as relevant Bank documents must be available for the public.²⁴³ Moreover, as a consequence of a request in Ecuador, for instance, Management has agreed to greater NGO participation and consultation in the implementation of actions taken under the project in question.²⁴⁴ However, the impact of the Panel was not always a positive one. While the Bank has on the one hand moved forward in adopting policies and improving internal structures for compliance,²⁴⁵ the Bank has at the same time started to weaken its own policy framework. This is, for instance, true for the indigenous peoples' policy.²⁴⁶ Moreover, the Bank increasingly shifts the responsibility for the implementation of protection measures to governments (which often lack the capacity or the political will to accomplish the safeguard policy objectives).²⁴⁷ In fact, these measures clearly undermine the jurisdiction of the Panel.

I. 4. 2. 3. Shortcomings

In sum, the Panel procedure has had a positive impact on requesters only in a few cases. The question which needs to be addressed then is what the reasons for the ineffectiveness of the Panel are. The most obvious shortcoming is that the Panel is not a judicial body.²⁴⁸ The probably most important shortcoming is that while the Panel can only make recommendations – which are not legally binding – it is the non-independent Board of Executive Directors that has decision-making power. The board can both decide whether an investigation should take place and what, if any, remedial actions should be taken. Board's

environmental problems of the claimants have not been solved and neither management nor the executive directors have been held accountable for the persistent social, environmental, and economic consequences of the project. Claimants, on the other hand, are still paying the price for the institutions' failure. As Treacle put it, "[i]ndeed, even with an inspection panel, individual and institutional accountability remains elusive." See Kay Treacle, Elías Díaz Peña, *Accountability at the World Bank: What Does It Take? Lessons from the Yacetyré Hydroelectric Project*, in Dana Clark, Jonathan Fox and Kay Treacle (eds.), *Demanding Accountability – Civil-Society Claims and the World Bank Inspection Panel*, Lanham/Boulder/New York/Oxford, Rowman & Littlefield Publishers, 2003, pp. 69-92, at pp. 83-87.

²⁴³ See Gualtieri, *supra* note 4, at p. 250.

²⁴⁴ See *idem*, at p. 250.

²⁴⁵ Ian Johnson, World Bank Vice President for Environmentally Sustainable Development, stated for example: "People are recognizing that the costs of non-compliance are higher than the costs of compliance at the end of the day. An ounce of prevention is worth a pound of cure. It has made quite a big difference.... I think there is a genuine desire to do the right thing. If you don't do due diligence, and you get caught, you pay a price." The statement is quoted in Treacle, *supra* note 221, at p. 270.

²⁴⁶ See above, at p. 14. Bank officials noted in this context: "Our experiences with the Inspection Panel are teaching us that we have to be increasingly careful in setting policy that we are able to implement in practice." See Treacle, *supra* note 221, at p. 272.

²⁴⁷ See in detail *idem*, at p. 273.

²⁴⁸ See Skogly, *supra* note 46, at pp. 184, 185. It has to be noted, however, that the lack of judicial status is not the biggest problem of the Panel because, especially at the global level, such a status is common with respect to human rights mechanisms. See also Morgan-Foster, *supra* note 143, at p. 640, fn. 317.

decisions are legally binding on staff.²⁴⁹ The Board, however, never identifies a specific Bank practice as a violation of Bank operational policies or of human rights.²⁵⁰ At best, it implicitly recognises the Panel's findings of non compliance with certain policies. The Panel is a political body and as such "concerned with cohesion among diverse membership and good working relationships with staff, encouraging it to give precedence to pragmatism over principle"²⁵¹. It does not act in a way in which a judicial body usually acts. It does not interpret the legal implications of the policies, nor clarify the scope of the operational policies.²⁵² Moreover, although the Board usually requests that Management submits periodic progress reports on the action plans, there is no standing committee that could evaluate the effectiveness of the remedial measures taken. In general, the Board largely accepts management's word on the status of a project "without independently verifying the facts on the ground or surveying the opinions of claimants"²⁵³. Ultimately, as De Feyter puts it, the board is an "unhelpful institution in promoting World Bank self-regulation on human rights"²⁵⁴.

Furthermore, while the Panel often confirmed harm caused by violations of policies, the action plans have been proposed by management, which is also responsible for their implementation. Thus, the same bank officials, which may be responsible for the claimants' problems, are tasked with resolving the very problems they have caused.²⁵⁵ The Panel, however, has no authority to monitor the implementation of remedial measures, nor is it able to provide the Board with an assessment of whether the proposed measures of the Management are satisfactory concerning the concerns of the claimants and/or bring the project into compliance with Bank policy.²⁵⁶

With respect to human rights, the Panel's procedure is limited to investigate only violations of the operational framework of the Bank. Because the Bank has not yet adopted a general human rights policy, the protection from human rights abuses therefore remains limited. The Panel does not in principle have the mandate to decide whether a Bank-financed

²⁴⁹ See De Feyter, *supra* note 51, at p. 23.

²⁵⁰ See *idem*, at p. 23.

²⁵¹ See De Feyter, *supra* note 44, at p. 124.

²⁵² See *idem*, at p. 124.

²⁵³ See Clark, *supra* note 20, at p. 220.

²⁵⁴ See De Feyter, *supra* note 51, at p. 23.

²⁵⁵ See Treacle, *supra* note 221, at pp. 258, 266.

²⁵⁶ See Clark, *supra* note 20, at p. 218. The non-competence to monitor the remedial actions proposed by management was adopted by the Board during the clarification of 1999. See Gualtieri, *supra* note 4, at p. 249. Moreover, the Panel procedure does not accept complaints of individuals. This is problematic insofar, as individual complaint mechanisms are seen as the future of human rights monitoring and the most effective means of developing human rights law. See Skogly, *supra* note 46, at p. 181; Morgan-Foster, *supra* note 143, at p. 640.

project has violated international law including international human rights law. Thus, although the Bank has human rights obligations stemming from international law violations of these obligations cannot be investigated by the Panel. However, this does not mean that the Panel has interpreted its mandate so as to be barred from considering human rights implications under its review. In fact, when people claimed that their human rights were negatively affected by a Bank-financed project,²⁵⁷ the Panel investigated the claim, but only to the extent that the alleged violations resulted in violations of the Bank policy framework.²⁵⁸ The Panel has not, however, addressed the issue of whether it is competent under its constituent document to interpret the policy framework in light of international human rights law, but has “sought to secure and enhance human rights protection under the relevant operational policies.”²⁵⁹ This is problematic insofar as self-regulated rules can be revised at will by the Bank itself.²⁶⁰

Moreover, the Panel procedure does not accept complaints of single individuals.²⁶¹ This is problematic insofar, as individual complaint mechanisms are seen as the future of human rights monitoring and the most effective means of developing human rights law.²⁶² Finally, the Panel is too close to the institution to be independent²⁶³ and lacks institutional expertise in human rights jurisprudence. The latter shortcoming is particularly problematic, given the complexity the of the human rights area as it has evolved over the past fifty years.

In sum, all these shortcomings lead to the fact that there are many cases in which the Panel finds a violation of Bank policies resulting in harm of claimants, but no effective remedy is provided.²⁶⁴ Thus, although the Panel got established, the situation remains as it was: “Although people affected by World Bank projects have rights under the policy

²⁵⁷ In fact, there is nothing in the Panel’s Resolution that prevents requesters from claiming that their human rights have been violated. Requesters did so, for example, in the Nigeria Lagos Drainage and Sanitation Project; in the Indian, Ecodevelopment Project; and in the Mining development and environmental control technical assistance project in Ecuador. Moreover, an indirect link with human rights was made, when requesters claimed that their living conditions were deteriorated as a consequence of resettlement, that their social protection was adversely affected as a consequence of structural adjustment programs, and that they have not been sufficiently consulted. There have been four cases in which claimants did so: the NTPC power generation project in Singrauli, India; the Itaparica resettlement and irrigation project in Brazil; a structural adjustment loan in Argentina; and the China Western Poverty Reduction Project. *See De Feyter, supra* note 44, at pp. 111 *et seq.*

²⁵⁸ *See idem*, at p. 119. Note that also management responded to such human rights claims in denying the human rights violations and not in using procedural arguments to defend its position.

²⁵⁹ *See idem*, at p. 119.

²⁶⁰ C.f. in this sense also the statement of Morgan-Foster : “Although upholding Bank policies and procedures may sometimes uphold human rights, it cannot be assumed that all human rights are upheld by the policies and procedures.” *See Morgan-Foster, supra* note 143, at p. 640.

²⁶¹ *See also Skogly, supra* note 46, at p. 181.

²⁶² *See Morgan-Foster, supra* note 143, at p. 640.

²⁶³ Thus, it was argued that as an institution within the Bank itself, the Panel’s idea cannot be completely independent of the institution’s ideology. *See Morgan-Foster, supra* note 143, at p. 642.

²⁶⁴ *See Clark, supra* note 20, at p. 220.

framework and adequate forum for raising concerns about violations, they are frequently denied an effective remedy”²⁶⁵.

Yet, the difficulties in investigating in countries with low human rights records, the negative impact Bank projects can have on the local population as well as the limited possibilities to hold the Bank accountable will be demonstrated in the next Chapter, by means of the Chad-Cameroon Petroleum Development and Pipeline Project.

Chapter II – The Case of the Chad-Cameroon Petroleum Development and Pipeline Project

II. 1. The Participation of the World Bank in the Project

The Chad-Cameroon petroleum development and pipeline project is the largest public/private sector investment project in Sub-Saharan Africa. It involves the drilling of approximately 300 oil wells from three oil fields in the Doba Bassin of southern Chad and the construction of a 1,070 kilometre-long pipeline through Chad and Cameroon to an exporting dock off of the Atlantic coast of Kribi. In 2000, the World Bank agreed to participate as a “lender and moral guarantor”²⁶⁶ in the project. The construction and implementation of the plan began in September 2000, since July 2003, oil has begun flowing from the fields at Doba to the offshore facility at Kribi.²⁶⁷

II. 1. 1. Logistics of the Project

There are numerous actors participating in the project: three of the world’s largest Oil Companies (Exxon Mobile, Chevron and Petronas)²⁶⁸ the World Bank Group, the European

²⁶⁵ See *idem*, at p. 220.

²⁶⁶ See Uriz, *supra* note 26, at p. 198.

²⁶⁷ See World Bank, *The Chad-Cameroon Petroleum Development and Pipeline Project – Questions and Answers, Where are we today with the Chad-Cameroon Pipeline Project?* [hereinafter Questions and Answers], at p. 2, at <http://www.worldbank.org/afr/ccproj/questions/index.htm> (last visited 15.04.2005).

²⁶⁸ Initially the consortium was formed by Exxon Mobil (with a 40 % stake), Shell (40 %) and Elf (20 %). Due to (allegedly) economic reasons (but also because they feared the sort of problems that have occurred in

Investment Bank, several Export Credit Agencies and commercial arranging banks.²⁶⁹ In financial terms, the project is led by Exxon (with a 40 % stake) in conjunction with Petronas (35 %) and Chevron (25 %), which finance together almost 60 % of the project costs.²⁷⁰ The Bank's minority contribution (less than six percent)²⁷¹ to the project's funding includes two IBRD loans (\$53.4 million to the government of Cameroon and \$39.5 million to the government of Cameroon) and IFC loans to the Chad Oil Transportation Company (TOTCO) and the Cameroon Oil Transportation Company (COTCO) (\$100 million). The governments of Chad and Cameroon contribute in total with about 3% of the project costs.²⁷² The other financial contributions stem from the European Investment Bank, Export Credit Agencies and commercial arranging banks. While the project costs were originally estimated at \$3.7 billion, in 2004 ExxonMobil stated that the total cost was \$4.2 billion.²⁷³

In addition, the Bank's contribution to the project includes also three loans financed by the Bank's IDA: one loan with the aim to build Chad's capacity to manage oil revenues and to use them effectively for poverty reduction (the so called Petroleum Sector Management Capacity Building Project – \$23.5 million); one loan which aims to assist the government of Chad in building capacity to implement its petroleum revenue management strategy (Management of the Petroleum Economy Project – \$17.5 million); and finally one loan to Cameroon to assist the government of Cameroon in dealing with environmental impacts of the pipeline (Petroleum Environment Capacity Enhancement Project – \$5.77 million).²⁷⁴

Although the financing part of the World Bank at six percent of the total costs is only a minor one, its role in the project as a lender, development promoter, and risk mitigator is enormous since the project would not have gotten off the ground without the participation of the Bank. In fact, the consortium (although Exxon Mobile, the principal shareholder in the project, is the world's wealthiest company)²⁷⁵ stated that it would be unwilling to proceed with the project without the Bank's participation.²⁷⁶ The companies did so for two reasons: First, the involvement of the Bank reduces the companies' political risks in a volatile region,

neighbouring Nigeria's Ogoni delta field; see below, at *supra* note 298), Shell and Elf pulled out of the project. See Uriz, *supra* note 26, at p. 198.

²⁶⁹ See in detail I. Gray, N. Reisch, *Chad's Oil: Miracle or Mirage? Following the Money in Africa's Newest Petro-State*, Catholic Relief Services/Bank Information Center, 2005, at p. 6.

²⁷⁰ See De Feyter, *supra* note 51, at p. 29.

²⁷¹ See Project Appraisal Document, *supra* note 26, at p. 37.

²⁷² See De Feyter, *supra* note 51, at p. 29.

²⁷³ See Gray, *supra* note 269, at p. 6.

²⁷⁴ See *idem*, at p. 10.

²⁷⁵ In studies stemming from the year 2000, Exxon Mobile was ranked as the richest company worldwide with annual revenues of \$210 billion. Only six nations (USA, Germany, UK, Italy, Japan and France) had higher GNPs than the annual revenues of the company. See Leslie Sklair, *Globalization. Capitalism and its Alternatives*, Oxford, Oxford University Press, 2002, at p. 37; see also Horta, *supra* note 5, at p. 233.

²⁷⁶ See Project Appraisal Document, *supra* note 26, at p. 22.

and second it facilitates their access to credit from other sources such as the European Investment Bank.²⁷⁷ The Bank's aim is to contribute with this project to the alleviation of poverty and to sustainable development.²⁷⁸ Indeed, Chad is one of the poorest countries worldwide. The UN Human Development Index, for example, ranked Chad in 2004 at position 167 out of 177 countries worldwide.²⁷⁹ Thus, the Bank emphasized on several occasions that oil extraction is Chad's only opportunity for economic development because of the lack of other resources.²⁸⁰ Depending on world oil prices, the project could yield up to US\$2 billion in revenues for Chad and US\$500 million for Cameroon over a twenty-five year production period, thereby increasing current annual government revenues by 45-50 % per year.²⁸¹

II. 1. 2. Criticism by several Non-Governmental Organisations

However, the project was and still is subject of substantial controversies. While project facilitators emphasized that the project provides a "model for every single project of this type worldwide"²⁸², several NGOs criticized the construction of the pipeline due to its allegedly detrimental social and environmental impacts with few development benefits.²⁸³ In this sense, NGOs called upon the Bank to postpone the decision to approve the project for two years until democratic structures in Chad are strengthened and Chad had built the capacity and established legal frameworks to ensure environmental protection, respect for human rights and transparent management of oil.²⁸⁴ The Bank, however, approved the project without delay on April 13, 2000.²⁸⁵ As a response to the criticism, the Bank urged the government of Chad to adopt a law securing that the direct revenues from oil production – royalties and dividends – be earmarked and spent on priority sectors targeting poverty reduction, which was described by the Bank as the first of its kind.²⁸⁶ To guarantee that the revenues gained from

²⁷⁷ See Horta, *supra* note 5, at p. 233.

²⁷⁸ "The success of the (...) project will be measured by poverty reduction rather than by barrels of oil produced or millions of dollars received by Chad from oil exports." See Gray, *supra* note 269, at p. 88.

²⁷⁹ See UNDP Human Development Report 2004, at http://www.hdr.undp.org/reports/global/2004/pdf/hdr04_HDI.pdf (last visited 22.04.2005).

²⁸⁰ See Questions and Answers, *supra* note 267, at p. 8.

²⁸¹ See Ayensu, *supra* note 228, at p. 90.

²⁸² See Gray, *supra* note 269, at p. 4.

²⁸³ See, e.g., Korinna Horta, Samuel Nguiffo, Delphine Djiraibe, *The Chad Cameroon Oil and Pipeline Project: Putting People and the Environment at Risk*, Association Tchadienne pour la Promotion et la Défense des Droits de l'Homme (Chad), Centre pour l'Environnement et le Développement (Cameroon) and Environmental Defense (USA), 1999.

²⁸⁴ See Samuel Nguiffo, *Traversing Peoples Lives: How the World Bank finances community disruption in Cameroon*, Friends of the Earth International, Yaounde, 2002, at p. 3.

²⁸⁵ See above, at *supra* note 26.

²⁸⁶ See Loi de Gestion des Revenus Pétroliers [Oil Revenue Management Plan], No. 001/PR/99, Chad, translated in Project Appraisal Document, *supra* note 26, at pp. 101 *et seq.*

the project will indeed be invested in priority sectors for poverty alleviation, the Bank established the so called Oversight Committee.²⁸⁷ Moreover, it established an International Advisory Group (IAG) of five independent experts to monitor the implementation of social and environmental safeguards of the project and an External Compliance Monitoring Group (ECMG) to monitor compliance of the Oil Consortium with environmental policies.²⁸⁸

II. 2. The Exploitation of Oil: Boon or Harm for the Population?

One of the main reasons why the Bank was criticized to participate in the project was the fear that due to the lack of a legal framework for the protection of the environment, respect for human rights and transparent management of oil revenues in both countries, Chad and Cameroon would face the same experiences as so many oil dependent countries before them: corruption, war and few – if any – developmental benefits for the poor. Indeed, there is little evidence that oil exploitation in the past has contributed to the welfare of developing countries.²⁸⁹

II. 2. 1. The “Oil Curse”

The reason for the misery of many oil dependent countries and for the inverse association between equitable growth and oil abundance has come to be known as the “resource curse” or “oil curse”, a phenomenon with complex economic, social and political

²⁸⁷ See *idem*, at Articles 15-19. The Committee is charged with monitoring the implementation of the law. At the beginning the committee consisted of seven state representatives (out of nine members in total) and two members of civil society. However, pressure from Chadian organisations led to the amendment of the law. Now, five out of nine members of the committee are state representatives, the remaining four members are civil society representatives. See Gray, *supra* note 269, at p. 51.

²⁸⁸ The reports of these two Groups can be found at <http://www.gic.iag.org> and <http://www.ifc.org/ecmg> (last visited 13.06.2005).

²⁸⁹ Although Nigeria, for example, is the largest oil producer in Africa, and the fifth largest in the Organisation of Petroleum Exporting States (OPEC), Nigeria’s oil wealth has not contributed to raise living standards. On the contrary, while these natural resources have enriched a small minority, per capita income in Nigeria is less than \$1 a day and living standards are below the average in sub-Saharan Africa. See Arvind Ganesan, *Human Rights, the Energy Industry, and the Relationship with Home Governments*, in Asbjørn Eide, Helge Ole Bergesen and Pia Rudolfson Goyer (eds.), *Human Rights and the Oil Industry*, Antwerp-Oxford-New York, Intersentia, 2001, pp. 47-70, at p. 54. Note also that energy and mining sector projects financed by the World Bank so far had the lowest performance ratings of all Bank lending sectors. See World Bank Operations Evaluation Department, OED, 2003 – *Annual Review of Development Effectiveness*, World Bank Group, Washington D.C., 29 July, 2003, at p. 42.

roots and profound human rights implications.²⁹⁰ In general, the oil curse implies that countries rich in natural resources suffer from lower living standards,²⁹¹ slower growth rates²⁹² and higher incidence of conflict²⁹³ than their resource poor counterparts.

The economic dimension of the oil curse is called the “Dutch Disease”, meaning in general, that the oil boom has a negative impact on other productive sectors, due to, for example, a shift of labour and capital to the booming sector from other productive sectors.²⁹⁴ In political terms, the “Oil Curse” often creates the so called “Oil State”, which is usually strong because of its control of oil wealth but at the same time weak due to its singular dependency on this wealth. As a consequence, such states are usually unstable, with weak mechanisms for accountability and transparency.²⁹⁵ Corruption is usually higher than elsewhere.²⁹⁶ Moreover, the concentration of political and economic power in the hands of the state creates incentives for gaining and maintaining power at any cost. Consequently, governments tend to rely increasingly on repression through the use of security forces to remain in power. In general, oil states are thus prone to conflict and political turmoil with the corresponding human rights consequences.²⁹⁷

II. 2. 2. The Investment in Countries with a Low Human Rights Record

Bearing the “oil curse” in mind, civil society groups required that the capacity of Chad and Cameroon to deal with oil revenues should be improved, democratic structures

²⁹⁰ See Mary Kaldor, Yahia Said, *Oil and Human Rights in Azerbaijan*, in Asbjørn Eide, Helge Ole Bergesen and Pia Rudolfson Goyer (eds.), *Human Rights and the Oil Industry*, Antwerp-Oxford-New York, Intersentia, 2001, pp. 91-114, at p. 94.

²⁹¹ C.f., for example, the situation in Angola: “There is [...] a shocking discrepancy between Angola’s potential wealth and the state of the vast majority of its inhabitants. [...] Potentially one of the richest countries in the Southern Hemisphere, it is now among the 15 poorest countries on earth.” See Philippe Le Billon, *The Oil Industry and the State of War in Angola*, in Asbjørn Eide, Helge Ole Bergesen and Pia Rudolfson Goyer (eds.), *Human Rights and the Oil Industry*, Antwerp-Oxford-New York, Intersentia, 2001, pp. 115-138, at p. 115. see also Camilo Pérez Bustillo, *Towards International Poverty Law?: The World Bank, Human Rights, and Indigenous Peoples in Latin America*, in Willem van Genugten, Paul Hunt and Susan Mathews (eds.), *World Bank, IMF and Human Rights*, Nijmegen, Wolf Legal Publishers, 2003, pp. 157-203, at p. 168, stating that “increased competition over access to major sources of oil and gas (...) provides a guide to likely conflict zones in the twenty first century.”

²⁹² Studies stemming from 1970-1993, for example, demonstrated that the growth rates in resource poor countries (without petroleum) had grew four times faster than resource rich countries (with petroleum). The greater the dependence on oil and other mineral resources, the worse, the growth performance was. See Gray, *supra* note 269, at p. 5.

²⁹³ During the civil war in Angola, for example, the so called UNITA rebels financed their military campaigns with the sale of diamonds while the government funded its military expenditures with oil revenues. See in detail concerning Angola, Le Billon, *supra* note 291, at pp. 115-138.

²⁹⁴ See Kaldor, *supra* note 290, at p. 94.

²⁹⁵ See *idem*, at p. 94.

²⁹⁶ In 2004, for example, African states highly depending on oil exports, such as Angola, Nigeria or Zimbabwe, were perceived by Transparency International to be among the world’s most corrupt regimes. See Transparency International, Corruption Perceptions Index 2004, at <http://www.transparency.org/cpi/2004/cpi2004.en.html#cpi2004> (last visited 15.06.2005).

²⁹⁷ See Kaldor, *supra* note 290, at p. 94.

strengthened and the human rights conditions should be in place *before* the project takes off.²⁹⁸ As a consequence of these concerns, the Bank set up what it claimed to be a transparent consultation process with locally affected people. However, the Bank failed to mention that these consultations were undertaken in the presence of military guards who were responsible for massacres in the oil region in the 1990s.²⁹⁹ Moreover, while the Bank mentioned in its appraisal document that “Chad has successfully put in place democratic political institutions”³⁰⁰, in reality, the situation in Chad is far from being ideal.³⁰¹ As a consequence of years of civil war and the brutal leadership of Hissène Habré³⁰², Chad is a country with weak institutions, high levels of corruption,³⁰³ bad governance, repression and human rights abuses.³⁰⁴ In general, government institutions act with impunity and without accountability. Moreover, under the new regime of Idriss Déby, results of the presidential elections in 1996 and 2001 were manipulated and showed enormous irregularities.³⁰⁵ There is a constant conflict between the “North”, which is traditionally associated with Islamic nomadic populations, and the “South”, representing Christian or other ethnic groups who

²⁹⁸ See Open Letter to Mr. James D. Wolfensohn, President of the World Bank, from 86 NGOs in 28 countries concerning the Chad/Cameroon Oil & Pipeline Project, July 9, 1998. NGOs feared that the project could lead to a new “Ogoniland”, which refers to enormous negative impacts on the environment through oil exploitation by Royal Dutch Shell in the delta of Nigeria and the struggle against these negative effects by the so called Ogoni. The repressive responses of the Nigerian government against the opponents with the execution of Kenule Ben Saro Wiwa and others at the forefront became a symbol of human rights violations and environmental depletion (at least indirectly) caused by oil exploitation by Western multinationals. See, e.g., Adeoye Amos Idowu, *Human Rights, Environmental Degradation and Oil Multinational Companies in Nigeria: The Ogoniland Episode*, in « Netherlands Quarterly of Human Rights », vol. 17, no. 2, June 1999, pp. 161-184.

²⁹⁹ See Horta, *supra* note 5, at p. 235. According to Amnesty International “Chadian security forces have reportedly killed more than 200 unarmed civilians in the Doba region, but no investigations into the massacres have been taken place.” See Amnesty International, *Just Earth! – Chad & Cameroon: Oil Pipeline Project Threatens Local Communities and Fragile Ecosystems*, at p. 1, at <http://www.amnestyusa.org/justearth/chad-cameroon.html> (last visited 15.04.2005).

³⁰⁰ See Project Appraisal Document, *supra* note 26, at p. 121.

³⁰¹ Also the situation in Cameroon is alarming. In fact, Cameroon is one of the most corrupt regimes worldwide (In 1999, the Transparency International even ranked Cameroon as the world’s most corrupt nation. See, Anyu J. Ndumbe, *The Chad-Cameroon Oil Pipeline – Hope for Poverty Reduction?*, in « Mediterranean Quarterly », vol. 3, 2002, pp. 74-87, at p. 85; in 2004 it was still under the 15 most corrupt countries. See Transparency International, *supra* note 266). Moreover, Amnesty International’s Annual Report 2004 accused Cameroon for having committed, for example, several extrajudicial executions, torture and ill-treatment, and holding prisoners of conscience. See Amnesty International USA, Annual Report 2004, at <http://www.amnestyusa.org/annualreport/statistics.html> (last visited 15.04.2005).

³⁰² Although the exact number of victims under his regime is unknown, it is supposed that about 40.000 people were killed and thousands more tortured. See Uriz, *supra* note 26, at p. 216.

³⁰³ In 2004, for example, Chad was ranked as the third most corrupt country in the world. See Transparency International, *supra* note 296.

³⁰⁴ See Horta, *supra* note 5, at p. 233.

³⁰⁵ See Uriz, *supra* note 26, at p. 217; Clark, *supra* note 20, at p. 210. As a consequence of the elections in 2001, demonstrations took place, which even caused the death of one person and many injured people. C.f. in this context, also the Resolution of the European Parliament on the Presidential Elections in Chad, which condemns the “harassment and arrest of opposition candidates” and believes that an electoral process cannot be carried out with efficiency and transparency in a situation where most elementary rights of expression are continuously threatened. See European Parliament, *Resolution of the European Parliament on the Presidential Elections in Chad*, in « Official Journal of the European Communities », C 53 E/404, 2002.

depend on agriculture for subsistence, where the oil fields are located.³⁰⁶ Freedom of expression, although in general tolerated, is restricted when it comes to subjects such as corruption or ethnicity among the political and military leaders, especially if oil is concerned.³⁰⁷ Ngarlejy Yorongar, the best known opposition leader in Chad, for example, was jailed after speaking out against the pipeline project in 1998. One month after having filed a request to the Independent Inspection Panel in 2001³⁰⁸, Yorongar was again arrested with six other opposition leaders, where he was tortured and ultimately had to seek medical attention in Paris.³⁰⁹ The U.S. State Department 2003 human rights report for Chad confirmed the difficult situation in Chad:

“The government’s human rights record remained poor, and it continued to commit serious human rights abuses. The Government limited citizens’ right to change their government. Security forces committed extrajudicial killings and continued to torture, beat, and rape persons. Prison conditions remained harsh and life threatening. Security forces continued to use arbitrary arrest and detention. The Government rarely prosecuted or punished members of the security forces who committed human rights abuses.”³¹⁰

Since the oil has begun flowing in July 2003, the situation got even worse. In fact, the political situation is becoming more unstable and the governance and human rights environment more tenuous.³¹¹ While the massacres in the 1990s are still not investigated, in October 2003, the first death penalties since 1991 were carried out.³¹² In May 2004, there was even a coup d’état. As a consequence of this coup, new military checkpoints emerged, tanks appeared on the street and mobile phone communications were cut off for days.³¹³

II. 2. 3. The “Two Speed Project”

It is reasonable to fear a new wave of instability if the project does not carry out its promised contribution to the reduction of poverty. The possibilities of violent conflict in Chad are omnipresent and these tensions will only increase with the arrival of new oil wealth. Yet, a

³⁰⁶ See Uriz, *supra* note 26, at p. 215; Horta, *supra* note 5, at p. 233.

³⁰⁷ See Peter Rosenblum, *Pipeline Politics in Chad*, in « Current History », vol. 99, no. 637, May 2000, pp. 195-199, at p. 196.

³⁰⁸ See in detail below, at Chapter II. 3. 1.

³⁰⁹ See Clark, *supra* note 20, at p. 210. After a call of World Bank president Wolfensohn to President Dibré, he and the other opposition leaders got ultimately released. See Horta, *supra* note 5, at p. 236.

³¹⁰ See U.S. Department of State, Country Report on Human Rights Practices for Chad 2003, Bureau of Democracy, Human Rights, and Labor, February 25, 2004, at <http://www.state.gov/g/dlr/rls/hrrpt/2003/27719.htm> (last visited 22.04.2005).

³¹¹ See Gray, *supra* note 269, at p. 17.

³¹² See *idem*, at p. 21. Moreover, a peaceful demonstration planned by human rights groups was prohibited by the authorities and in November 2003, the privately owned radio station *FM Liberté*, a vocal critic of human rights abuses, for example, was closed by authorities as a consequence of voiced concerns about increased insecurity and the pipeline project. See Amnesty International USA, Annual Report 2004: Chad, at <http://www.amnesty.org/web/web.nsf/print/98187FE54FE606B180256E7B005124FD> (last visited 26.04.2005).

³¹³ See Gray, *supra* note 269, at p. 18.

report of NGOs in 2005, investigating in detail the adopted oil revenue management plan, concluded that the “model project” as praised by the Bank hangs on a threat. The report stated that there is a clear gap between the speed of the construction of the pipeline and the needed changes in governance and government capacity to manage the impact of the petroleum economy.³¹⁴ These findings were confirmed by the ECMG which stated in 2004: “Government capacity to monitor operations of the oil project is not yet fully effective, although the Doba Project construction phase is almost complete and new satellite oil fields³¹⁵ are being explored”³¹⁶. This “two-speed problem” is now affecting the government’s ability to use oil revenues to reduce poverty. While oil is already flowing from the fields at Doba to the offshore facility at Kribi, Chad’s capacity to deal with the revenues stemming from the exploitation remains limited. The reduction of poverty, however, depends on the capacity of Chad to “absorb increased levels of funding and develop effective spending plans – capacities that are woefully lacking”³¹⁷. In this sense, the report of the NGOs stated that, although it is too early to declare that the “Chad experiment” is a failure or success, there are already lessons that can be drawn from the project:

“[O]ne of the most fundamental lessons that Chad offers today is the importance of ensuring that minimum conditions of respect for human rights [...] and demonstrated government capacity to implement pro-poor programs are in place prior to promoting investment in the extractive industries”³¹⁸.

The Bank itself acknowledged in a report published in 2003 that the “minimum core and sectoral governance criteria, such as the quality of the rule of law; the absence of armed conflict or of a high risk of such a conflict; respect for labour standards and human rights; (...) and government capacity to promote sustainable development through economic diversification” should be established before the Bank supports the extractive industry sectors.³¹⁹ Moreover, the report confirmed that projects in the oil, gas and mining sectors caused more harm than good and that the World Bank “is not set up to effectively facilitate and promote poverty alleviation through sustainable development in extractive industries in

³¹⁴ See *idem*, at p. 88.

³¹⁵ The oil consortium has started to exploit oil not only from the original Doba oil fields, but also from new oil fields, which are not covered by the environmental and social safeguards provided by the Bank. See Gray, *supra* note 269, at p. 28.

³¹⁶ See ECMG, *Report of the Tenth Visit of the external Compliance Monitoring Group April-May 2004*, June 2004, at p. 45.

³¹⁷ See Gray, *supra* note 269, at p. 91.

³¹⁸ See *idem*, at p. 3.

³¹⁹ See World Bank, *Striking a Better Balance: The Extractive Industries Review – Executive Summary*, 2003, at p. 2.

the countries it assists”³²⁰. Such projects only contribute to poverty alleviation if, *inter alia*, human rights are integrated and mainstreamed in all areas of World Bank Group practices and policies. The Review concluded:

„[T]he Extractive Industries Review believes that there is still a role for the World Bank Group in the oil, gas and mining sectors – but only if its interventions allow extractive industries to contribute to poverty alleviation through sustainable development. And that can only happen when the right conditions are in place. The three main enabling conditions are: [1] pro-poor public and corporate governance, including proactive planning and management to maximize poverty alleviation through sustainable development; [2] much more effective social and environmental policies; and [3] respect for human rights.”³²¹

Yet, with respect to the Chad-Cameroon pipeline project, the Bank argued in line with its traditional approach: the human rights record of a borrowing country does not fall in the mandate of the Bank and can therefore not be considered in its loan decisions.³²² This paper has, however, already established that the Bank’s Articles of Agreement do not prevent the Bank from considering human rights. The Chad-Cameroon pipeline represents a clear example that the Bank should do so. In fact, the development funding of corrupt and repressive regimes – like Chad – strengthens the hands of these regimes and eases pressure within the country for policy changes. This is so for two reasons: (1) Internally, Bank funding helps shore up the domestic image of the regimes in power and lends them an aura of invincibility because of their foreign backing. (2) Externally, it presents a vote of confidence in a given regime, which is usually followed by other donors financing the very same repressive regime.³²³ Yet, there are already signs that the project in Chad and Cameroon confirms these views. In fact, Chad’s President Déby used the first \$4.5 million of a \$25 million “bonus” that was given by the consortium to the government of Chad, to purchase weapons.³²⁴ This arms purchase and the deterioration of the human rights conditions in Chad clearly lead in this direction.

³²⁰ See *idem*, at p. 6.

³²¹ [Emphasis added]. In this sense, the Bank should assess the human rights records of companies and “should also work with governments to clarify and strengthen, where necessary, the legal basis for resource and tenure rights”. See *idem*, at pp. 1, 6.

³²² “The Bank is concerned by human rights in Chad as elsewhere, but its mandate does not extend to political human rights.” See Inspection Panel, *Report and Recommendation on Request for Inspection, Chad: Petroleum Development and Pipeline Project, Management of the Petroleum Economy Project, Petroleum Sector Management Capacity Building Project*, 2001, at p. xxviii.

³²³ See Horta, *supra* note 5, at p. 236.

³²⁴ See Ndumbe, *supra* note 301, at p. 85.

II. 3. The Two Inspection Panel Decisions and the Accountability Gap

While the Bank praised the project also as a model for the mitigation of environmental and social harm, both civil society observers and Bank intern monitoring bodies raised concerns about the negative impact of the project on the livelihood of the local population.³²⁵

II. 3. 1. The Chadian Claim – Breaking New Grounds?

In this sense, local people from both Chad and Cameroon claimed in front of the Panel that their rights have been violated and that the Bank has violated several of its policies. The first claim stems from 2001, submitted by Mr. Ngarlejy Yorongar, acting for himself and on behalf of more than 100 residents of Chad's oil producing region who claimed that the Bank had failed to comply with its policies and that the project represents a threat to local communities, to their cultural heritage and to their environment.³²⁶ The requesters identified the following adverse direct or indirect impacts on their communities: the pollution of water sources, degradation of the environment, lack of compensation for expropriation, *violations of human rights*, and threats to cultural property.³²⁷ Moreover, they claimed that the oil revenue management plan designated only a "laughably small quota" of the revenues to the oil producing region³²⁸ and pointed out that they had been inadequately consulted during the information phase and that the environmental assessment as well as the compensation provided to affected people was inadequate.³²⁹ In particular they mentioned that the Bank had violated its own policies and procedures on *inter alia* environmental assessment (OD 4.01),

³²⁵ See, e.g., Samuel Nguiffo, Susanna Breikopf, *Broken Promises: The Chad Cameroon Oil and Pipeline Project; Profit at Any Cost?*, Yaounde, Friends of the Earth International, 2001; and the reports of the ECMG and the IAG; see at *supra* note 258. The findings of these bodies include an increasing emerge of prostitution of young women and HIV/AIDS in the project area, abuses of workers rights, the pollution of rivers, and the expropriation of the indigenous Bakola people in Cameroon without adequate compensation. However, the findings of NGOs and the two monitoring bodies are beyond the scope of the present paper. Nevertheless, environmental and social impacts will be discussed within the scope of the two Panel decisions.

³²⁶ See The Inspection Panel, *The Investigation Report: Chad-Cameroon Petroleum and Pipeline Project* (Loan No. 4558-CD); *Petroleum Sector Management Capacity Building Project* (Credit No. 3373-CD); and *Management of the Petroleum Economy* (Credit No. 3316-CD), 17 July 2002, at pp. 5, 6.

³²⁷ See Ayensu, *supra* note 228, at p. 93.

³²⁸ See *idem*, at p. 93.

³²⁹ See Inspection Panel, *supra* note 326, at p. ix.

involuntary resettlement (OD 4.30), poverty reduction (OD 4.15), indigenous peoples (OD 4.20) and forestry (OP 4.36).³³⁰

After the recommendation of the Panel to investigate the claims, the Board approved the Panel's recommendation on October 1st 2001.³³¹ Management's first response to these claims was that there has been no violation at all of the Bank's policies.³³² The Board, however, gave green light for a full investigation. On 17 July 2002 the Panel sent its investigation report and found violations of several policies.³³³ These include a violation of the Bank's environmental assessment policy,³³⁴ insufficient measures to achieve poverty reduction objectives at the national level and a violation of the Bank policy on consultation.³³⁵

One main issue was that of poverty reduction. It was already briefly mentioned that the Bank urged Chad to adopt a law which was supposed to guarantee that the oil revenues are used for "[p]ublic health and social affairs, education, infrastructure, rural development (agriculture and livestock), environment and water resources"³³⁶. According to this law, 10% of royalties will be saved for future generations and 5% will be allocated to the oil producing regions.³³⁷ The law is of particular importance with respect to economic, social and cultural rights.³³⁸ However, it leaves large discretion for the government because it does not determine the distribution of revenues among the sectors.³³⁹ Moreover, it later became clear that the Panel was deprived from accessing some important documents with regard to the oil revenue

³³⁰ See *idem*, at p. 5.

³³¹ See *idem*, at p. x.

³³² See Delphine Djiraibe, Korinna Horta, Samuel Nguiffo, *Access to Justice from Local Village to Global Bedroom: An Experience in International Accountability – The World Bank Inspection Panel and the Chad-Cameroon Oil and Pipeline Project*, N'Djamena, Association Tchadienne pour la Promotion et la Défense des Droits de l'Homme *et al.*, September 2004, at p. 10.

³³³ See De Feyter, *supra* note 51, at p. 30.

³³⁴ See Inspection Panel, *supra* note 326, at p. 11, stating: "The Consortium and Bank Management did not explicitly consider the spatial dimensions of the Project as required by OD 4.01 with the result that they tend to restrict it to immediate area of the three oilfields and the pipeline right-of-way to Cameroon (...). In the light of this, the Panel finds Management not in compliance with OD 4.01 in this respect." At p. 12, the Panel continued that the regional impacts resulting from cumulative actions were not adequately dealt with. Moreover, the failing to require the preparation of a Regional Environmental Assessment, which would adequately assess the nature and extent of broader environmental and social concerns resulting from the project, represented another violation of OD 4.01. See *idem*, at pp. 14, 15.

³³⁵ The Panel, however, found no violation of the policy on forestry. Concerning the alleged violation of the indigenous peoples policy, the Panel noted that this policy did not apply to this project because the people living along the pipeline in Chad did not constitute indigenous peoples. See Inspection Panel, *supra* note 326, at pp. 37, 39, 43, 58.

³³⁶ See Oil Revenue Management Plan, *supra* note 286, Article 7.

³³⁷ See *idem*, Articles 8 (c), 9.

³³⁸ See also De Feyter, *supra* note 51, at p. 31.

³³⁹ See *idem*, at p. 32. Moreover, all indirect revenues – including income taxes on the oil companies – are not governed by the law and "will [therefore] go directly into general government coffers." These indirect revenues will amount to more than \$3 billion over the next 25 years. See Gray, *supra* note 269, at p. 2.

shares for Chad.³⁴⁰ Nevertheless, the Panel raised several concerns about the allocation of revenues for poverty reduction.

The Panel, for example, found that the allocation of revenues between the oil consortium and Chad was inadequate.³⁴¹ In this sense, it criticized that the oil producing region would only receive 5% of the revenues.³⁴² Moreover, it stated that there is no plan at all for the effective use of the 5% of the revenues that the region is supposed to receive. It wondered why spending to the judiciary and the functioning of the legal system was excluded from the Act.³⁴³ In general, it questioned the capacity of Chad to allocate the revenues for poverty reduction and confirmed serious concerns about the “Bank’s failure to assist in the timely development and strengthening of the institutional capabilities of the government of Chad to monitor the project effectively before revenues were expected to flow”³⁴⁴. Therefore, it proposed continuing monitoring by independent bodies such as the IAG and urged management to renew and invigorate its efforts to ensure that the structures created are fully operational before the expected earnings arrive.³⁴⁵ Management in turn replied to these concerns in stating that it will “provide continued monitoring and supervision” but that many aspects related to poverty reduction are beyond its control.³⁴⁶ The irony of Chad’s lack of capability to use oil revenues for poverty reduction is of course that this lack was exactly the reason why NGOs required a moratorium of the project. The Bank’s answer at that time was, however, that it cannot postpone the implementation of the project, because this would have detrimental effects on the poor. Yet, today, according to several reports of the IAG and the ECMG, as well as including the Panel findings, it is exactly this lack of capacity that gives little development profits to the poor.³⁴⁷

The claim is of particular interest here since requesters also claimed several human rights violations including the difficult situation in Chad. In this sense, claimants stated that their rights to life, to fair and equitable compensation, to resettlement not far from their native soil, to work, to respect for their customs and burial places, to social well being and to public

³⁴⁰ This is a violation of the Resolution establishing the Panel, which provides for the Panel to have access to “pertinent documents” and encouraged the Bank’s general counsel in 2002 to issue a legal opinion confirming that the Panel may have access to pertinent proprietary information in the course of its work. *See Ayensu, supra* note 228, at p. 96.

³⁴¹ *See* Inspection Panel, *supra* note 326, at p. 85.

³⁴² *See* Djiraibe, *supra* note 332, at p. 10.

³⁴³ *See* Inspection Panel, *supra* note 326, at p. 83; De Feyter, *supra* note 51, at p. 32.

³⁴⁴ *See* Ayensu, *supra* note 228, at p. 96.

³⁴⁵ *See* Inspection Panel, *supra* note 326, at pp. 81, 86.

³⁴⁶ *See* World Bank Management, *Management Report and Recommendation in Response to the Inspection Panel Investigation Report No. 23999*, at p. 18; Djiraibe, *supra* note 332, at p. 10.

³⁴⁷ *See* also above, at pp. 45 *et seq.*

consultation were threatened.³⁴⁸ Furthermore, they stated that there has been no respect for human rights since President Déby took power and massive human rights violations occurred in the oil producing region.³⁴⁹ The Bank's Management responded in its typical manner: human rights are considered to lie outside its mandate and the Bank does not have a human rights policy, so compliance cannot be an issue.³⁵⁰ Human rights violations are only relevant if they have direct economic effects on the project. This was, according to management, not the case here.³⁵¹

Yet, it was already mentioned that the Panel in general does not have the competence to investigate human rights matters. This is so, because there is no policy on human rights and the Panel can only examine if there have been violations of the Bank's self-adopted policies. However, after the imprisonment of Mr. Yorongar, the Panel seemed to be "frustrate[ed] "with Management's economic effects approach"³⁵². Although the Panel stated that it is not within the mandate of the Panel to assess the status of human rights in Chad in general or in isolation, and that there are several other universal monitoring bodies specifically in charge of this subject, it "felt obliged to examine whether [...] human rights violations in Chad where such as to impede the implementation of the Project in a manner incompatible with the Bank's policies"³⁵³. In addition, the Chairman of the Panel, Mr. Edward S. Ayensu, stated during a presentation to the Bank's Board of Executive Directors on September 12, 2002 that human rights are indeed within the boundaries of the Panel's jurisdiction because such rights are implicitly embedded in several World Bank policies, including the requirements for consultation.³⁵⁴ Furthermore, he added that "the situation in Chad exemplifies the need for the Bank to be more forthcoming about articulating its role in promoting rights within the countries in which it operates".³⁵⁵ In this sense the Panel concluded that the human rights

³⁴⁸ See De Feyter, *supra* note 51, at p. 30.

³⁴⁹ See *idem*, at p. 30.

³⁵⁰ See Djiraibe, *supra* note 332, at p. 12.

³⁵¹ See Inspection Panel, *supra* note 326, at p. 61.

³⁵² See De Feyter, *supra* note 51, at p. 31.

³⁵³ See Inspection Panel, *supra* note 326, at pp. 62, 63.

³⁵⁴ In the words of the chairman: "Given the world-wide attention to the human rights situation in Chad...and the fact that this was an issue raised in the Request for Inspection by a Requester who alleged that there were human rights violations in the country, and that he was tortured because of his opposition to the conduct of the project, the Panel was obliged to examine the situation of human rights and governance in the light of Bank policies. We are convinced that the approach taken in our report, which finds human rights implicitly embedded in various policies of the Bank, is within the boundaries of the Panel's jurisdiction." See Ayensu, *supra* note 228, at p. 97.

³⁵⁵ See *idem*, at p. 98, adding: "...[P]erhaps this case should lead...to study the wider ramifications of human rights violations as these relate to the overall success or failure of policy compliance in future Bank-financed projects".

situation in Chad is “far from ideal”³⁵⁶ and questioned the compliance with Bank policies, “in particular those that relate to informed and open consultation”³⁵⁷:

“[I]t is evident that, at least prior to 1997, the consultations were conducted in the presence of security forces, which is incompatible with Bank’s policy requirements. As the Panel has said on previous occasions, full and informed consultation is impossible if those consulted perceive that they could be penalized for expressing their opposition to, or honest opinions about a Bank financed project”.³⁵⁸

As a consequence the Panel required more open and informed consultation, but acknowledged at the same time that there was some progress on this issue since 1999. Management responded that it “intends to continue monitor and to promote activities that would ensure that meaningful dialogue with civil society takes place”³⁵⁹. Concerning the human rights violations in Chad, management’s response was even more disappointing. Management stated that there is no policy on “respect for human rights” and so compliance cannot be an issue. Also the adopted action plan by the Board does not address the overall human rights situation in Chad.³⁶⁰ The Chairman of the Panel, however, mentioned that the case was “breaking new grounds” because it supported an ongoing internal discussion to reconsider the Bank’s position concerning respect for human rights in its borrowing countries.³⁶¹ Indeed, as a response to the Extractive Industries Review, requiring the integration and mainstream of human rights into all areas of World Bank Group policy and practice, Management stated:

“[I]t has major reviews under way to consider how to engage with human rights issues. IBRD/IDA has recently appointed a senior advisor within the Office of the President to coordinate this work. IFC expects to draft proposals to put IFC in a leadership position on private sector development and human rights, which it will discuss with its Board soon. In both IBRD/IDA and IFC, this is an issue that goes well beyond the EI [Extractive Industries] sector. Activities in EI will be undertaken with direct reference to any overall change in the WBG’s approach to human rights issues”.³⁶²

It remains to be seen to what extent the Panel really had an impact on the Bank’s approach to human rights. However, in light of the statement of Management mentioned above, there seems to be indeed a shift in the Bank’s approach to human rights.

³⁵⁶ See Inspection Panel, *supra* note 326, at p. 63.

³⁵⁷ See *idem*, at p. 63.

³⁵⁸ See *idem*, at p. 42. However, the Panel recognized that the Bank, since 1999, has made significant efforts and encouraged frequent consultations with local communities and civil society in an environment more conducive to an open exchange. See Ayensu, *supra* note 228, at p. 96.

³⁵⁹ See World Bank Management, *supra* note 346, at p. 30.

³⁶⁰ See De Feyter, *supra* note 51, at p. 31.

³⁶¹ See Ayensu, *supra* note 228, at p. 97.

³⁶² See Annex to the Extractive Industries Review, *Detailed Management Response to Specific EIR Recommendations*, 26 November 2003, at p. 33.

II. 3. 2. The Cameroonian Claim

The second claim was filed in September 2002, by the Center for Environment and Development (CED) on behalf of Cameroonian communities living along the pipeline. They claimed that, *inter alia*, the policies of Environmental Assessment (OP 4.01), Natural Habitats (OP 4.04), Poverty Reduction (OD 4.15), Involuntary Resettlement (OD 4.30) and Indigenous Peoples (OD 4.20) were violated. Moreover, they alleged that the project and the Cameroon Petroleum Environment Capacity Enhancement Project (CAPECE) have had an adverse impact on local communities and their environment or they are likely to result in harm because of flaws in project design and implementation.³⁶³ In particular they claimed five central issues: (1) the situation of the indigenous Bakola People;³⁶⁴ (2) a lack of compliance with the compensation plan;³⁶⁵ (3) degradation of water resources;³⁶⁶ (4) the denial of worker's rights;³⁶⁷ and (5) the spread of HIV/AIDS along the pipeline route. Management responded in October 2002, acknowledged that the Cameroonian government did not have the capacity to carry out environmental monitoring or properly implement the Indigenous Peoples' Plan, but stated that the claimants are not and will not be adversely affected by Management's failure to comply with Bank policies and procedures.³⁶⁸ The Panel recommended an investigation in November 2002, and on December 16, 2002, Board approved the Panel's recommendation.³⁶⁹

In general, the Panel's findings concerning this case were strongly criticized by NGOs, stating that the Panel seemed to give greater weight to the statements of project sponsors than to those of the people who turned to it for help and were to some extent at odds with findings of the Bank's internal monitoring bodies, IAG and ECMG.³⁷⁰ Concerning the CAPECE project, for example, which is supposed to establish government capacity to monitor and

³⁶³ See The Inspection Panel, *Investigation Report, Cameroon: Petroleum Development and Pipeline Project (Loan No. 7020-CM) and Petroleum Environment Capacity Enhancement (CPAECE) Project (Credit No. 3372-CM)*, 2 May 2003, at pp. 3, 4.

³⁶⁴ In this sense, they argued that their environment was disrupted (especially drinking water was destructed and polluted from construction works); that the Indigenous Peoples Plan was inadequate; and that there was a lack of attention concerning the question of land security for the Bakola in the Indigenous Peoples Plan. See Djiraibe, *supra* note 332, at p. 12.

³⁶⁵ They stated that individual farmers lack sufficient compensation for destroyed property, or have not been informed about the existence of grievance mechanisms. See *idem*, at p. 13.

³⁶⁶ They mentioned various instances of disruption of flows of water courses and of the degradation, and sometimes destruction, of springs. Moreover, they claimed that the polluted water is essential for them. See *idem*, at p. 13.

³⁶⁷ E.g., low salaries and there were cases of workers who were laid off following occupational injury and the non payment of medical expenses. See *idem*, at p. 13.

³⁶⁸ See Inspection Panel, *supra* note 363, at p. vii.

³⁶⁹ See *idem*, at p. vii.

³⁷⁰ See Djiraibe, *supra* note 332, at pp. 16 *et seq.*

manage the environmental impact of the pipeline, project sponsors claimed that it is the Cameroonian government that is responsible for the success of CAPECE. However, in compliance with the Panel,³⁷¹ Management acknowledged that “progress on capacity building has been at best negligible”³⁷². Consequently, the Panel urged management to accelerate the implementation of CAPECE. However, management stated that it is the lack of institutional and human resource capacity of Cameroon that makes it impossible to accelerate the pace of CAPECE much more than it has been so far.³⁷³ The Panel acknowledged this response and excused project shortcomings as having been unavoidable due to the lack of capacity of the government. However, NGOs criticized that the Panel did not investigate why the institutional weakness of Cameroon was not taken into account prior to the implementation of the project.³⁷⁴

In addition, the Panel did not find any violations of worker’s rights because there is no policy on this issue. Although there is indeed no policy on this issue, the creation of jobs was one of the very reasons why the Bank praised the project as benefiting the poor. The reality, however, was that the local population only got hardly any new jobs and those who did were sometimes treated “like animals”.³⁷⁵ Moreover, while the IAG stated in 2002 that “[t]he situation of the Bakola [indigenous] people is cause for concern, given the few concrete measures taken this far on the sideline of the project”³⁷⁶, the Panel found that the pipeline project appears to have little or no effect on the Bakola/Bagyeli hunting habits or the utilization of forest resources.³⁷⁷ NGOs pointed out that this finding is particularly disturbing, given the fact that the Bakolas’ right to their land was not addressed at all and that this community, according to British anthropologists working in the area, was not properly consulted.³⁷⁸

Nevertheless, the Panel found that some policies have been violated. In this sense, it found that the policy on environmental assessment had been violated, in stating that a cumulative environmental assessment had never been completed, even though management

³⁷¹ The Panel found that the Bank was not in compliance with paragraph 12 of OD 4.01 on Institutional Capacity.

³⁷² See Djiraibe, *supra* note 332, at p. 14.

³⁷³ See World Bank, *Management Response and Recommendation in Response to the Inspection Panel Report*, Report No. INSP/R 2003-003, May 28, 2003, at p. 11.

³⁷⁴ See Djiraibe, *supra* note 332, at p. 14.

³⁷⁵ This treatment was stated both locally and during a visit of a Cameroonian trade union representative in Washington D.C., quoted in Djiraibe, *supra* note 332, at p. 16, fn. 34.

³⁷⁶ See International Advisory Group, *Report of the Visit to Cameroon, April 7 to 18, 2002*, May 24, 2002, at p. 13.

³⁷⁷ See Inspection Panel, *supra* note 363, at p. 61.

³⁷⁸ Also the Panel findings concerning the compensation plan and the alleged pollution of water resources were criticized. Concerning both issues, the Panel found no violation of applicable policies. See Djiraibe, *supra* note 332, at pp. 17 *et seq.*

itself had called for one during revision of the first environmental assessment in 1997.³⁷⁹ The Panel also pointed out that in particular the spread of HIV/AIDS in the pipeline construction region could have been at least partly avoided by a long-term risk mitigation plan and was therefore a violation of the Bank's Environmental Assessment policy, because the Bank did not require the preparation of such a plan, although it was aware of the health risks posed by the project.³⁸⁰

II. 3. 3. The Accountability Gap

The Panel cases demonstrate that while the real risks of the project are borne by the local population living along the pipeline routes, their possibilities to enforce their rights are limited. The Panel's role ended with the investigation of the situation in both countries. Management responded to the Panel's findings in a disappointing way, stating that it will "intensify supervision" efforts on the project, or "continue monitoring and dialogue". Moreover, in stating that, for example, there are reasons beyond the control of the Bank why there are (yet) no visible progresses concerning poverty reduction (which was the very reason of the Bank to participate) the Bank seems to shift the burden of responsibility to other actors, like the governments or the oil consortium.³⁸¹ The companies made already at the beginning clear that it is the Bank that overtakes the safeguard role, which is therefore also to blame. The governments either do not have the capacity or the political will³⁸² to implement the necessary measures that can ensure that revenues are allocated to the poor.³⁸³ Moreover, they can argue that their dependency on external resources gives them only a partial control over the project and so shift the burden on other actors involved in the project.³⁸⁴ As a consequence, neither the oil consortium, nor the governments, nor the Bank is ultimately to blame. The result is then a sizeable accountability gap.³⁸⁵

³⁷⁹ See Inspection Panel, *supra* note 363, at p. x.

³⁸⁰ See *idem*, at p. 46.

³⁸¹ As De Feyter put it: "The Bank (...) only accepts accountability for what it has agreed to with the two governments, and insists that they bear the primary responsibility." See De Feyter, *supra* note 51, at p. 29.

³⁸² C.f. in this context, for example, the weapons purchase of the government of Chad. Moreover, there is no guarantee that the governments refrain from using repressive measures against critics of the project. The imprisonment and torture of Mr. Yorongar demonstrated that Chad clearly has the potential to do so.

³⁸³ In this context, It is worth noting that the Panel stated that the Bank "has the obligation to ensure that systems are in place to avoid or mitigate adverse impacts" which also includes human rights violations that may occur with respect to the project. See Inspection Panel, *supra* note 326, at p. 25; De Feyter, *supra* note 51, at p. 33.

³⁸⁴ See De Feyter, *supra* note 51, at p. 30.

³⁸⁵ See *idem*, at p. 30.

The Chad-Cameroon pipeline project has also demonstrated that the Bank is “deeply ambivalent internally about its role in ensuring respect for human rights and the proper functioning of political institutions”³⁸⁶. Consequently, the Bank cannot overtake the “moral guarantor” role concerning matters such as human rights and poverty reduction “that other actors are happy to entrust it with”³⁸⁷, as long as the adopted safeguard measures are inadequate. Moreover, the Bank has often claimed that without its lending activities, the situation in the countries would be even worse in that projects would move forward without the safeguard policies of the Bank.³⁸⁸ With respect to the Chad-Cameroon pipeline project, this argument lacks teeth: In fact, the project would not have taken place at all without the participation of the Bank. In conclusion, while the project’s contribution to the standard of living of the local populations is only a minor one, inequities and human rights abuses are increasing and the benefits – at the moment – only accrue to the governments and the oil companies.

Chapter III – Proposals for Reforms

The Chad-Cameroon pipeline project has clearly demonstrated that human rights do play an important role in the context of Bank-financed projects. First, it has demonstrated that the human rights record of a borrowing country plays an important role for the success of such projects, and second, it made evident that human rights complications may develop in the context of such projects. The main question which needs to be addressed then is what measures can be taken by the Bank to increase the probability that such projects indeed contribute to poverty reduction, to avoid negative human rights impacts of its lending activities and what would constitute an effective remedy mechanism. This paper argues that the Bank first should adopt a human rights policy³⁸⁹ and second should reform the Inspection Panel, so as to ensure that negative consequences of projects are minimized and remedied.

³⁸⁶ See *idem*, at p. 33.

³⁸⁷ See *idem*, at p. 33.

³⁸⁸ See Clark, *supra* note 20, at p. 222.

³⁸⁹ See also, e.g., Darrow, *supra* note 3, at pp. 234 *et seq*; Bradlow, *supra* note 45, at pp. 78 *et seq*; MacKay, *supra* note 9, at pp. 620 *et seq*; Gillies, *supra* note 63, at p. 24.

III. 1. A Human Rights Policy is Indispensable

A human rights policy would be useful for different reasons: First, the adoption of such a policy could stop the debate about human rights obligations of the Bank. Second, the Bank's approach to human rights is ad hoc, ambiguous and sometimes arbitrary. It is therefore "difficult for various stakeholders to know what they can expect from the [Bank] in terms of promoting and protecting human rights"³⁹⁰. A human rights policy could clarify this ambiguity. Third and probably most important, the Bank could be held accountable in front of the Inspection Panel for non-compliance with human rights related decisions.

In adopting such a policy, the Bank has nevertheless to be careful, so as not to contradict its political prohibition provision in its AoA. Thus, a definition of the term "political" would be useful. As Bradlow put it, this provision should prevent the Bank from "interfering in domestic partisan affairs. The Bank should abstain from considering issues such as which political party or fraction should hold political power, who should win specific political debates, or which official should be appointed to which post"³⁹¹. The second option would be to amend the AoA.³⁹² An amendment of the AoA would require, after the approval by the Board of Governors, the approval of member countries by a majority of three fifths (60%) of the members having at least 85% of the total vote. However, due to the fact that such a high majority may not be attainable for this kind of amendment, this option seems to be unfeasible.³⁹³

Such a policy should be written and developed with the participation and agreement of U.N. bodies charged with human rights matters, and should meet at least the minimum human rights obligations of the Bank, meaning to respect human rights and not to contravene the human rights obligations of its member states.³⁹⁴ The policy should commit Bank staff to comply with existing international human rights standards.³⁹⁵ At the same time, detailed human rights protection should be upheld in policies which relate to human rights, such as the one on indigenous peoples³⁹⁶. In this sense, the Bank could adopt a similar policy as the

³⁹⁰ See Bradlow, *supra* note 45, at p. 80.

³⁹¹ See *idem*, at p. 81.

³⁹² Note that the European Parliament, for instance, has made calls to amend the Bank's Articles of Agreement to ensure that human rights issues are addressed. See J. Verspaget, Report on the Activities of the Bretton Woods Institutions (World Bank and International Monetary Fund), Eur. Parl. Ass., Doc. No. 7256, 1995.

³⁹³ See also Shihata, *supra* note 57, at p. 577.

³⁹⁴ See also MacKay, *supra* note 9, at pp. 622, 623.

³⁹⁵ See also De Feyter, *supra* note 51, at p. 15. Thus, Bank staff could receive human rights training and an in-house unit with expertise in human rights should be established.

³⁹⁶ See *idem*, at p. 15. Note, however, that the new policy on indigenous peoples (OP 4.10 on indigenous peoples, adopted on May 15, 2005) is directly at odds with international human rights law. See above, at pp. 13, 14.

already existing policy with respect to the environment. To use the words of this policy: “The Bank does not finance projects that contravene applicable international human rights agreements”.³⁹⁷ Moreover, the Bank should ensure that all stakeholders affected by Bank financed projects are able to freely express their opinions about the project and to organize themselves to advocate for their interests.³⁹⁸ The expected impact of Bank-financed projects should be assessed, so as to ensure that the human rights conditions of all stakeholders are improving or – at least – not deteriorating.

In order to achieve these goals, the Bank should prepare human rights impact assessments of the expected change in the human rights condition of the stakeholders over the duration of the operation and identify in their planning documents which human rights are likely to be affected.³⁹⁹ As the Bank is already undertaking environmental assessments, the same should be applied to human rights.⁴⁰⁰ With respect to economic, social and cultural rights, it should, for example, use indicators – such as the adoption of legislative measures and statistical data concerning social issues – in order to assess the progressive realization of economic and social rights.⁴⁰¹ Such an assessment nevertheless requires high technical expertise. Thus, the Bank should cooperatively work with human rights treaty bodies, United Nations decision-making bodies, human rights NGOs or the OHCHR.⁴⁰² Moreover, involuntary resettlement or loss of income, which may arise in the context of projects, should, where possible be avoided. Thus, Bank staff should consider the existence of less harmful alternatives, should ensure that negatively affected people can freely participate in the design and implementation of the project or should give negatively affected people the possibilities for redress and adequate compensation.⁴⁰³

Concerning the protection of human rights, it has to be noted that the Bank cannot play the leading international role in protecting victims from human rights abuses perpetrated by

³⁹⁷ See also Klein, *supra* note 60, at p. 113. There is indeed no legal reason why the Bank should treat the environment and human rights in a different manner. In fact, the different treatment even “contradicts the logic of the Bank’s self-adopted rules and the logic of international law in the fields of sustainable development”. See De Feyter, *supra* note 52, at p. 16. In this sense, the Bank should follow the practice of some donor states (links between human rights, good governance and aid disbursements have been made, for example, by the U.K., the U.S., the Netherlands, France, Japan or the Nordic countries. See Gillies, *supra* note 64, at p. 8) and other aid agencies which already included human rights references in their work (The most recent example in this context is the European Bank for Reconstruction and Development, which is explicitly obliged by its Charter to pay attention to human rights and governance dimensions of its lending policies and operations. See above, at *supra* note 44; Gillies, *supra* note 63, at p. 8.).

³⁹⁸ See Bradlow, *supra* note 45, at p. 83.

³⁹⁹ See *idem*, at p. 84; c.f. also Åkermark, *supra* note 6, at p. 528; UN Committee on Economic, Social and Cultural Rights, *General Comment No. 2, on International Technical Assistance Measures*, UN Doc. E/1990/23, at paragraph 8 (b).

⁴⁰⁰ See Åkermark, *supra* note 6, at p. 528.

⁴⁰¹ See in detail Tomaševski, *supra* note 16, at pp. 403-413.

⁴⁰² See in detail Darrow, *supra* note 3, at pp. 279 *et seq.*

⁴⁰³ See Bradlow, *supra* note 45, at p. 84.

third parties. However, it was already mentioned that, where the Bank has a certain control over third parties, it can be argued that the Bank even has an obligation to do so. In any case, the Bank has a responsibility to ensure that their activities do not exacerbate problematic human rights situations.⁴⁰⁴ One example should be mentioned here: In situations, in which, negatively affected people, as a consequence of using Bank provided mechanisms (for example suing the Bank in front of the Inspection Panel), suffer human rights abuses because of the use of these mechanisms, the Bank needs to develop a policy which deals with such situations.⁴⁰⁵ As Bradlow puts it: “It is irresponsible for the Bank to invite people to participate in its activities and then fail to protect them when its interventions result in reprisals from the Borrower State or its agents.”⁴⁰⁶ In cases of human rights abuses, the Bank should work with the offending governments and international human rights organisations to stop the abuses. If the human rights violations are serious, it should even condition any assistance on the correction of human rights abuses. The issue at stake here is thus “human rights conditionality *strictu sensu*”⁴⁰⁷, meaning that if a state – such as Chad – has a low human rights record, the Bank should lend money to this state only under the condition that certain human rights, such as freedom of the press and of association, are guaranteed.⁴⁰⁸ If the project is already implemented, the Bank could deny any future requests for financing or suspend existing funding commitments.⁴⁰⁹

The Bank could thereby adopt a rights-based approach to development, which would mean tying its projects to, and requiring that they meet and fulfil international human rights standards.⁴¹⁰ Horta stated in the context of the Chad-Cameroon pipeline that a rights-based approach “would have called for careful consideration of the courageous voices of civil society organizations in both countries, and may have required the Bank to limit its role to helping create the legal framework necessary for democratic change before helping to launch

⁴⁰⁴ See *idem*, at p. 86.

⁴⁰⁵ C.f. in this context, for example, the imprisonment and torture of Mr. Yorongar as a consequence of filing a claim to the Inspection Panel. See above at p. 44.

⁴⁰⁶ See Bradlow, *supra* note 45, at p. 87.

⁴⁰⁷ See De Feyter, *supra* note 44, at p. 85.

⁴⁰⁸ See also in this context, Gillies, *supra* note 63, at pp. 10 *et seq.*

⁴⁰⁹ See Bradlow, *supra* note 45, at p. 88. This should be done so, because it is widely accepted that the enjoyment of civil and political rights is indispensable for economic development. Such rights empower citizens to struggle for social justice and material well-being and to hold governments accountable. As Gillies put it: “Social and economic rights, which the Bank sees as its comparative advantage, will not be realized in their absence.” See Gillies, *supra* note 63, at p. 24.

⁴¹⁰ See also Horta, *supra* note 5, at pp. 239, 240, arguing that the Bank does not sufficiently focus on the livelihoods of local people, which “must be placed at the centre of concern if the environment is to be protected. Local organizations all too often witness economic development activities leading to the dispossession of local communities and the increasing marginalization of vulnerable populations. The situation is worsened when the loss of traditional rights, such as customary rights to common property resources, is not replaced by the acquisition of new rights, leaving increasing numbers of politically powerless people destitute.” A rights based approach to development, she argues, would overcome some of these shortcomings.

a multi-billion dollar project that endangers further human repression and marginalization”⁴¹¹. And indeed, one of the clearest lessons of the Chad-Cameroon pipeline project is that the human rights situation in borrowing countries does play a significant role of whether such projects will be a success or a failure in terms of the alleviation of poverty. This was confirmed both by external and internal reports investigating the project.

In sum, the prerequisites seem to be clear: the Bank’s political prohibition clause in its Articles of Agreement does not cover human rights concerns; what is more, the Bank is obliged to consider human rights in its lending activities according to international law; respect and the protection of human rights are one of the most fundamental prerequisites for development; both external and internal observers have outlined the importance of human rights in the Bank’s work. Yet, the consequences of the adoption of a human rights policy would nevertheless be harsh. It would definitely complicate the work of the Bank and “slow down the lending pipeline and reduce the lending volume at least temporarily”⁴¹². However, as Horta put it, this would be indeed “a small price to pay (...) for making development aid relevant to its intended beneficiaries, the poor and vulnerable population groups”⁴¹³. Moreover, the adoption of such a policy is “not a matter of discretion of the Bank, but a matter of compliance with its international legal obligations”⁴¹⁴.

III. 2. Recommendations for a Reform of the Inspection Panel

If it is agreed that Bank-financed projects can have negative effects on the livelihood of local populations, that the World Bank has human rights obligations stemming from international law and that the Panel is insufficient to ensure redress for requesters,⁴¹⁵ the next

⁴¹¹ See Horta, *supra* note 5, at p. 237.

⁴¹² See *idem*, at p. 243.

⁴¹³ See *idem*, at p. 243. Clark stated in this context: “The non-involvement of the World Bank in projects that violate human rights and environmental integrity of affected communities should be viewed as a natural outcome of moving toward sustainable development: projects that are inherently unsustainable will no longer be supported or subsidized by the public. Accountability and rule of law, as applied in the context of the World Bank, should mean that in certain cases, environmental and social impacts will trump economic and technical (and, indeed, political) justifications for a project. The logical conclusion is that there will be some projects that cannot be financed by the World Bank.” See Clark, *supra* note 20, at p. 223.

⁴¹⁴ See MacKay, *supra* note 9, at p. 624.

⁴¹⁵ In this sense, claimants often were frustrated because of the lack of real change on the ground and the lack of adequate compensation as well as because of the Bank’s failure to bring projects into compliance despite well-documented problems. See Clark, *supra* note 20, at p. 223. Moreover, in the Itapartica Resettlement and Irrigation Project in Brazil, for example, requesters claimed that their standard of living, health and economic well being of people living in the area had been adversely affected by delays in completion of the project. Although the Panel recommended investigating the case, the Board finally did not favour it. “This shows that the Bank still controls the work of the Inspection Panel, and consequently, it is unable to operate as an independent redress possibility for people adversely affected by Bank projects.” See Skogly, *supra* note 46, at p. 185.

question that needs to be addressed is how the Panel could be reformed in order to ensure that those harmed have not only recourse but also redress. The shortcomings of the present Panel have already been discussed.⁴¹⁶ In order to address these shortcomings and to ensure compliance of the Bank with its human rights obligation, many proposals have been made:⁴¹⁷

Skogly, for instance, proposed a change in the U.N. system, meaning that the U.N. Commission of Human Rights could under its 1503-procedure establish a working group in order to receive communications from individuals or organisations claiming that the Bank has violated its international human rights obligations. The purpose of this procedure would be to discuss the allegedly negative human rights impact of Bank-financed projects publicly and to “shame” the institution. Due to the fact that the Bank would probably take criticism of U.N. bodies more serious than States, this procedure would, according to Skogly, have ultimately an impact on the Bank and its lending activities.⁴¹⁸

Morgan-Foster argues that the ILO model of tripartism could also be relevant for activities of the IFIs.⁴¹⁹ In this sense, he proposes the establishment of a tripartite organisation, consisting of independent U.N. human rights experts, experts appointed from the Bank (like Panel members), which would be charged with human rights and macroeconomic matters, and representatives of States (half of members who represent borrowing States and half of members who represent lending States) or NGOs (which are often better suited to represent the interests of the marginalized and the poor) in order to monitor and discuss how harm through Bank-financed projects can be avoided and remedied.

Petersmann recommends a “complementary ‘Global Compact’ between the UN and UN specialized agencies”, requiring international organisations in general and the World Bank in particular to submit annual ‘human rights impact statements’ to human rights bodies and to engage in transparent dialogues about the contribution by specialized agencies to the promotion and protection of human rights. His proposal refers to the structure of the European Communities. In this sense, he argues: “Just as the ratification of the European Convention on Human Rights (ECHR) by all EC member states prompted the European Court of Justice (ECJ) to construe EC law in conformity with the human rights guarantees of the ECHR, so must the

⁴¹⁶ See above, at Chapter I. 4. 2. 3.

⁴¹⁷ See Petersmann, *supra* note 122, at pp. 625, 637, 639

⁴¹⁸ See Skogly, *supra* note 46, at p. 181.

⁴¹⁹ Although Morgan-Foster tries to establish a monitoring mechanism for Structural Adjustment Programmes and focuses mainly on the IMF (see Morgan-Foster, *supra* note 143, at pp. 643-646), his recommendations can also be relevant for Bank-financed projects.

law of worldwide organizations be interpreted in conformity with universally recognized human rights law.”⁴²⁰

This paper, however, has identified that shortcomings in the Panel process deprive negatively affected people from effective remedies. Thus, in order to empower the Panel and to ensure effective remedies, the paper proposes a reform of the Panel procedure. Because of the adoption of a general human rights policy the Panel could also investigate negative human rights impacts of Bank-financed projects and could thus also ensure that Bank activities are in compliance with human rights matters. In this sense, the paper recommends the following reform:

1. The Panel should be composed of four members, two members from within the Bank structure, and two human rights experts, appointed, for example, by the UN Commission of Human Rights. Such a composition would ensure that economic as well as human rights and environmental concerns are considered equally and ensure that complex human rights issues can be investigated thoroughly. Moreover, two members coming from outside the Bank structure would improve the independence of the Panel.⁴²¹
2. The Panel should not be obliged to rely on the Board’s approval to undertake an investigation. Although board members have since the second review⁴²² in every single case approved panel recommendations, there is no guarantee that they will continue to do so.
3. Moreover, after the submission of Management’s action plan, the Panel should be charged with deciding what actions finally will be taken, not the Board of Executive Directors. This should be done so also on the basis of submissions of negatively affected people, defining their claims. As has been discussed in the Chad-Cameroon pipeline project, management responses and the final action plans approved by the Board have been disappointing. The final decision power of the Panel could ensure that the Panel findings are also implemented.
4. The Panel’s mandate should include a possibility to provide compensation in the case of violations of Bank policies by Bank-financed projects. Displaced persons, for

⁴²⁰ See Petersmann, *supra* note 122, at pp. 625, 637, 639.

⁴²¹ NGOs noted, for example, that the absence of any finding of violations by the Panel with respect to the Cameroonian claim concerning the Bakola indigenous people “served as a precedent for two later World Bank projects, the Forest and Environment Sector Program (FESP) and the National Participatory Development Program (PNDP). Both projects were justified, since the Panel report did not view land security for the indigenous peoples as a central issue.” See Djiraibe, *supra* note 332, at p. 18. Such outcomes could probably be avoided with the proposed composition.

⁴²² See above, at *supra* note 228.

example, who have been badly resettled, could receive proper compensation or community-based development benefits such as education, sanitation systems or health care.

5. The Panel should be authorized to monitor or evaluate the finally taken remedial measures. In many Panel cases, claimants reported that the situation deteriorated again as soon as the Panel process was over. A mandate to supervise the finally taken action plans and to work and consult with the claimants and the affected communities could ensure that projects are indeed in compliance with the Bank's policy framework.⁴²³
6. The Panel's mandate currently does not explicitly cover the possibility to make contributions to improving the interpretation and implementation of Bank policies. The recommendations of the Panel in the Chadian claim – that the Bank should be more forthcoming about articulating its role in promoting rights within countries it operates – have demonstrated that a formal role for the Panel as a valuable source of independent advice to the Bank Board on the institution's evolving policy framework would be a critical step in making full use of the Panel's potential.
7. Finally, in view of the Chad-Cameroon pipeline project and the accountability gap mentioned above, the Bank and other project facilitators should before entering in such investments clearly establish who will be responsible and for what. The Bank should not agree to be the “moral guarantor” in such projects without offering sufficient protection mechanisms for people who are negatively affected by such projects.

Conclusion

This paper has addressed three main issues: the current approach of the Bank with respect to human rights; the legal possibilities to hold the Bank accountable for caused harm; and the consequences of the Bank's approach in practice. Arguments have been made that the Bank's current approach to human rights – claiming that it is prohibited by its constituent document to consider the human rights record of a borrowing country and to adopt a general

⁴²³ Clark recommends in this context the establishment of a so-called „Development Effectiveness Remedy Team” (DERT), which would be independent from Bank management and charged with remedying the social and environmental policy violations “identified by the Inspection Panel and helping to ensure that [for example] displaced and aggrieved communities are adequately compensated and assisted to improve their standard of living” (see Clark, *supra* note 20, at p. 224). The DERT would supervise the implementation of Management's action plan's and would work and consult with the claimants and the affected communities. Its mandate would *inter alia* include the possibility to structure remedial measures in order to properly compensate negatively affected people. See *idem*, at pp. 224-226.

human rights policy – is legally untenable. Even more so, it has been argued that the Bank is under an obligation to, in the very least, respect human rights, meaning not to violate or to become complicit in violations of general rules of human rights law. When the Bank breaches its human rights obligations, the legal possibilities to hold it accountable are nevertheless of a limited scope. There is currently only one institution – the Independent Inspection Panel – that can deal with claims filed against the Bank. Due to the absence of a general human rights policy the Panel, however, only has a limited mandate to deal with human rights matters. Moreover, past experience has demonstrated that the Board of Executive Directors, disposing of the mandate to decide whether and what kind of remedial measures should be taken when the Panel has identified violations of Bank policies, is an institution incapable of providing negatively affected people with effective remedies.

The case study of the Chad-Cameroon Petroleum Development and Pipeline Project has demonstrated that the Bank has to be much more forthcoming with respect to human rights, especially in the extractive and energy industries. First, the project has stressed the importance of considering the institutional capacity of governments to use oil revenues for poverty reduction and the human rights record of a borrowing country prior to the investment in large scale infrastructure projects. Second, a claim filed by negatively affected people from Chad, claiming that the project has had negative effects on their human rights situation and mentioning the difficult human rights situation in Chad, has stressed the importance of adopting a general human rights policy and providing negatively affected people with effective remedies. And finally, the project has demonstrated that a human rights accountability gap may well develop in multi-party development projects, such as the Chad-Cameroon pipeline project. Such an accountability gap can only be addressed if the project facilitators at the beginning clearly establish who is responsible and for what. Moreover, the paper argued that the Bank cannot overtake the safeguard or moral guarantor role in poverty reduction or human rights issues as long as its safeguard mechanisms are insufficient.

In order to address some of the shortcomings of the current developmental approach of the Bank with respect to human rights, the paper proposed the adoption of a general human rights policy. Such a policy should include the commitment not to engage in activities that would contravene applicable human rights law. Moreover, the Bank should make assessments of the negative human rights impacts which Bank-financed projects might have and should ensure that people that exercise rights recognized by World Bank policies – such as the right to file a complaint to the Panel – do not suffer human rights violations as a consequence for occupying the political space provided by the Bank. In the case of serious human rights

violations in borrowing countries, the Bank should even use human rights conditionality as a tool to improve the human rights conditions in the countries in which operates.

Moreover, the paper argued that the Bank must take responsibility that its activities do not undermine the rights of affected communities in order to ensure that its activities contribute to the promotion of human rights and the rule of law. Thus, effective remedies must exist in situations where Bank-financed projects have clearly violated human rights law or where the Bank has disregarded its obligations to protect human rights in the case it is in a position to do so. In this sense, the paper proposed a reform of the Inspection Panel so as to ensure that negatively affected people not only have recourse but also redress.

The ideas proposed in the present paper are neither intended to be definitive answers, nor should be assumed that the adoption of the proposed reforms would entail a solution of all problems. The adoption of a general human rights policy is difficult, would definitely complicate the work of the Bank and would have as a consequence that many projects cannot take place. However, it should be noted here again that the Bank is not prohibited by its constituent document to adopt such a policy and that the adoption of such a policy is even not a matter of discretion but a matter of compliance with its international legal obligations. Moreover, if it is agreed that development is not possible without human rights, why should the Bank as the most powerful development agency act in a different way as so many other development agencies, which already included human rights in their activities? The Bank has announced that it currently has major reviews under way to consider how to engage with human rights issues. It remains to be seen what results this reconsideration of the Bank's policies will yield.

The Bank stated on its homepage that it is “[w]orking for a world free of poverty”⁴²⁴. Ultimately, a reform of the Inspection Panel providing effective remedies for negatively affected people and the adoption of a human rights policy could only contribute to making development aid relevant to its intended beneficiaries, the poor and vulnerable population groups.

⁴²⁴ See World Bank, Official Website, at <http://www.worldbank.org> (last visited 22.06.2005).

Annex – Inspection Panel Cases

Requests	Request registered	Management Response	Panel Recommendation	Board Approves Investigation	Violation found	Outcome at Project Level
1. Arun III Hydro, Nepal	Yes	Deny Violations	Investigation	Yes	Yes	Loan cancelled, dam stopped, claimants satisfied.
2. Expropriation, Ethiopia	No (Because the Panel found no linkage to acts or omissions by the Bank).	-	-	-	-	No impact.
3. Emergency Power VI, Tanzania	Yes	Deny Violations	Found ineligible (The Panel found that claimants lacked standing).	-	-	No impact.
4. Rondônia Natural Resources Management Project, Brazil	Yes	Acknowledges some Failure to Comply	Investigation	No (Asked Panel to review progress on project implementation)	-	Partial project reform including compensation, creation of protected areas, and civil-society legitimacy; may have triggered state government backlash against environmental commitments.
5. Biobío	No	-	-	-	-	No discernable

Dam, IFC, Chile	(Because the Panel does not have jurisdiction over IFC projects).					outcomes on the ground; partial compensation for a group of those affected
6. Jamuna Bridge, Bangladesh	Yes	Deny Violations	No Investigation	-	-	Partial compensation, with high transaction costs for affected people.
7. Yacréta Hydropower, Paraguay – Argentina	Yes	Deny Violations	Investigation	Restricted (Investigation limited to “review and assessment” of action plan)	Yes	Management cover-up of panel findings; reservoir level height has not increased, avoiding displacement of thousands of people; privatization stopped. Many issues unresolved, e.g., resettlement compensation and mitigation.
8. Jute Sector Adjustment, Bangladesh	Yes	Deny Violations	No Investigation	-	-	Cancellation of loan.
9. Itaparica Resettlement and Irrigation, Brazil	Yes	Deny Violations	Investigation	No (Government action plan)	-	Board accepted Brazilian government action plan; panel process avoided; cash compensation instead of land for a minority of those affected;

						divided social organisations; problems remain unresolved.
10. Singrauli/NTP C 1, India	Yes	Acknowledges some Failure to Comply	Investigation	Restricted (Investigation limited to Washington desk review)	Yes	Board accepted management action plan, including Independent Monitoring Panel; improved compensation package for 1,200 families out of hundreds of thousands of affected people; claimants not satisfied.
11. Ecodevelopment, India	Yes	Acknowledges some Failure to Comply	Investigation	No (Board agrees to review progress in six months)	-	Claimants not satisfied; no evidence that problems have been solved.
12. Lesotho Highlands Water, South Africa	Yes	Deny Violations	Found ineligible (The Panel found no evidence linking complaints of harm to Bank actions or omissions).	-	-	No impact; claimants dissatisfied with Panel process.
13. Lagos Drainage and Sanitation, Nigeria	Yes	Deny Violations	No Investigation	-	-	Panel satisfied by management steps to compensate additional people; claimants not satisfied by Panel process and

						inadequate compensation.
14. Land Reform, Brazil	Yes	Deny Violations	Found ineligible (The Panel found no evidence of harm).	-	-	Interest rates for loans for land reduced; some modifications in project design; bank reworked National Land Fund, guaranteed not to fund purchase of lands subject to legal; civil-society divided over response.
15. Lesotho Highlands Water Project	Yes	Deny Violations	Found ineligible (The Panel found no link between complaints of harm and Bank actions or omissions).	-	-	No impact.
16. Western Poverty Reduction Project, China	Yes	Acknowledges some Failure to Comply	Investigation	Yes	Yes	Board rejected management action plan; China withdrew project; bank financing of resettlement component cancelled; claimants satisfied; however, China announced to continue without participation of bank.
17. Pro-	Yes	Deny Violations	No	-	-	Funding restored;

Huerta Structural Adjustment Loan, Argentina			Investigation			claimants satisfied.
18. Land Reform, Brazil	Yes	Deny Violations	Found ineligible (The Panel found that the claimants had not previously raised concerns with bank management).	-	-	No impact
19. Lake Victoria Environment, Kenya	Yes	Deny Violations	Investigation	Yes	Yes	Project completed; panel findings about consultation violations moot; Board criticized management for distorting factual data and for challenging panel's findings.
20. Prodeminca, Ecuador	Yes	Deny Violations	Investigation	Yes	Yes	No remedial efforts proposed by management with respect to the claims made by the requesters.
21. Singrauli/NTP C (2nd request), India	No (the claim was filed after the loan was closed).	-	-	-	-	No impact.
22. Chad-Cameroon Pipeline, Chad	Yes	Deny Violations	Investigation	Yes	Yes	<i>See</i> at Chapter II. 3. 1.
23. Coal	Yes	Deny Violations	Investigation	Yes	Yes	Board accepted

Sector Project, India						management's action plan to continue supervision; progress report not later than in one year.
24. Bujagali Hydropower, Uganda	Yes	Deny Violations	Investigation	Yes	Yes	Project delayed due to corruption scandals; claimants – at the moment – satisfied.
25. Structural Adjustment, Papua Neu Guinea	Yes	Deny Violations	No Investigation	-	-	Bank disbursed loan; made commitment to address governance problems through new project; claimants not satisfied; governance problems persist.
26. Yacretá Hydropower, Paraguay – Argentina (2nd request)	Yes	Deny Violations	Investigation	Yes	Yes	Board approved management's action plan and for the first time allowed the Panel to assess management's actions and to carry forward a dialogue with the affected people.
27. Chad- Cameroon Pipeline, Cameroon	Yes	Deny Violations	Investigation	Yes	Yes	<i>See at Chapter II. 3. 2.</i>
28. Manila Second	Yes	Deny Violations	Found ineligible	-	-	The government of the Philippines

Sewerage Project, Philippines						cancelled the sea dumping component of the project.
29. Chad-Cameroon Pipeline, Cameroon	No	-	-	-	-	No impact.
30. Indigenous and Community Biodiversity Project, Mexico	Yes	Deny Violations	No Investigation	-	-	According to the Panel's Annual review of 2004, significant steps to ensure the participation of affected communities have been taken.
31. Cartagena Water Project, Colombia	Yes	Deny Violations	Investigation	Yes	Pending	Pending
32. Mumbai Urban Transport Project, India (1)	Yes	Deny Violations	Investigation	Yes	Pending	Pending
33. Mumbai Urban Transport Project, India (2)	Yes	Acknowledges some Failure to Comply	Investigation	Yes	Pending	Pending
34. National Drainage Program Project, Pakistan	Yes	Deny Violations	Investigation	Yes	Pending	Pending
35. Public Works and Employment Creation Project,	No	-	-	-	-	-

Burundi						
36. Forest Concession Management Project, Cambodia	Yes	Deny Violations	Investigation	Yes	Pending	Pending

Sources: Kay Treacle, Jonathan Fox, Dana L. Clark, *Lessons Learned*, in Dana Clark, Jonathan Fox and Kay Treacle (eds.), *Demanding Accountability – Civil-Society Claims and the World Bank Inspection Panel*, Lanham/Boulder/New York/Oxford, Rowman & Littlefield Publishers, 2003, pp. 247-278, at pp. 255 *et seq.*; World Bank, *Inspection Panel Annual Report 2004*, Washington D.C., The World Bank, 2004, at <http://siteresources.worldbank.org/EXTINSPECTIONPANEL/Publications/20319076/AR2003-2004.pdf> (last visited 28.06.2005); World Bank, Inspection Panel: Requests, Washington D.C., The World Bank, at <http://web.worldbank.org/WBSITE/EXTERNAL/EXTINSPECTIONPANEL/0,,contentMDK:20221606~menuPK:64129250~pagePK:64129751~piPK:64128378~theSitePK:380794,00.html> (last visited, 20.06.2005).

Bibliography

I. Articles in Journals/Revues

Bissel, Richard E., *Recent Practice of the Inspection Panel of the World Bank*, in « American Journal of International Law », vol. 91, no. 4, October 1997, pp. 741-744.

Black, Elisabeth C., *Litigation as a Tool for Development: The Environment, Human Rights, and the Case of Texaco in Ecuador*, in « Journal of Public and International Affairs », vol. 15, 2004, pp. 142-164.

Bradlow, Daniel D., *The World Bank, the IMF, and Human Rights*, in « Transnational Law and Contemporary Problems », vol. 6, Spring 1996, pp. 48-90.

Bradlow, Daniel D., Grossman Claudio, *Limited Mandates and Intertwined Problems: A New Challenge for the World Bank and the IMF*, in « Human Rights Quarterly », vol. 17, no. 3, 1995, pp. 411-443.

Cahn, Jonathan, *Challenging the New Imperial Authority: The World Bank and the Democratization of Development*, in « Harvard Human Rights Journal », vol. 6, Spring 1993, pp. 159-194.

Chimni, B. S., *International Institutions Today: An Imperial Global State in the Making*, in « European Journal of International Law », vol. 15, no. 1, 2004, pp. 1-38.

Ciorciari, John D., *The Lawful Scope of Human Rights Criteria in World Bank Credit Decisions: An Interpretive Analysis of the IBRD and IDA Articles of Agreement*, in « Cornell International Law Journal », vol. 33, no. 2, 2000, pp. 331-372.

Clapham, Andrew, Jerbi, Scott, *Categories of Corporate Complicity in Human Rights Abuses*, in « Hastings International & Comparative Law Review », vol. 24, 2001, pp. 339-349.

Clark, Dana L., *The World Bank and Human Rights: The Need for Greater Accountability*, in « Harvard Human Rights Journal », vol. 15, Spring 2002, pp. 205-226.

Collingsworth, Terry, *The Key to Human Rights Challenge: Developing Enforcement Mechanisms*, in « Harvard Human Rights Journal », vol. 15, Spring 2002, pp. 183-204.

De Feyter, Koen, *The International Financial Institutions and Human Rights – Law and Practice*, Antwerp, Institute of Development Policy and Management, 2002.

Einhorn, Jessica, *The World Bank's Mission Creep*, in « Foreign Affairs », vol. 80, no. 5, 2001, pp. 22-35.

Fox, Jonathan A., *The World Bank Inspection Panel: Lessons from the First Five Years*, in « Global Governance », vol. 6, 2000, pp. 279-318.

Gillies, David, *Human Rights, Governance, and Democracy: The World Bank's Problem Frontiers*, in « Netherlands Quarterly of Human Rights », vol. 11, no. 1, 1993, pp. 3-24.

Gualtieri, Gowlland Alix N., *The Environmental Accountability of the World Bank to Non-State Actors: Insights from the Inspection Panel*, in « British Yearbook of International Law », vol. 72, 2001, pp. 213-253.

Hamm, Brigitte I., *A Human Rights Approach to Development*, in « Human Rights Quarterly », vol. 23, 2001, pp. 1005-1031.

Horta, Korinna, *Rhetoric and Reality: Human Rights and the World Bank*, in « Harvard Human Rights Journal », vol. 15, Spring 2002, pp. 227-243.

Hutchins, Thomas, *Using the International Court of Justice to Check Human Rights Abuses in World Bank Projects*, in « Columbia Human Rights Law Review », vol. 23, no. 2, 1992, pp. 487-525.

Idowu, Adeoye Amos, *Human Rights, Environmental Degradation and Oil Multinational Companies in Nigeria: The Ogoniland Episode*, in « Netherlands Quarterly of Human Rights », vol. 17, no. 2, June 1999, pp. 161-184.

Klein, Pierre, *Les Institutions Financières Internationales et les Droits de la Personne*, in « Revue Belge de Droit International », vol. 32, no. 1, 1999, pp. 97-114.

MacKay, Fergus, *Universal Rights or a Universe Unto Itself? Indigenous Peoples' Human Rights and the World bank's Draft Operational Policy 4.10 on Indigenous Peoples*, in « American University International Law Review », vol. 17, 2002, pp. 528-624.

Marks, Stephen, *The Human Right to Development: Between Rhetoric and Reality*, in « Harvard Human Rights Journal », vol. 17, Spring 2004, pp. 137-169.

Marmorstein, Victoria E., *World Bank Power to Consider Human Rights in Loan Decisions*, in « The Journal of International Law and Economics », vol. 13, no. 1, 1978, pp. 113-137.

McCorquodale, Robert, *Globalization and Human Rights*, in « Human Rights Quarterly », vol. 21, 1999, pp. 735-766.

McGoldrick, Dominic, *Sustainable Development and Human Rights: An Integrated Conception*, in « International and Comparative Law Quarterly », vol. 45, January 1996, pp. 796-818.

Moller, Nicholas H., *The World Bank: Human Rights, Democracy and Governance*, in « Netherlands Quarterly of Human Rights », vol. 15, no. 1, 1997, pp. 21-45.

Morgan-Foster, Jason, *The Relationship of the Structural Adjustment Programs to Economic, Social and Cultural Rights: The Argentine Case Revisited*, in « Michigan Journal of International Law », vol. 24, Winter 2003, pp. 577-646.

Moris, Halim, *The World Bank and Human Rights: Indispensable Partnership or Mismatched Alliance?*, in « ILSA Journal of International & Comparative Law », vol. 4, 1997, pp. 173-200.

Ndumbe, Anyu J., *The Chad-Cameroon Oil Pipeline – Hope for Poverty Reduction?*, in « Mediterranean Quarterly », vol. 3, 2002, pp. 74-87.

Norton, Joseph J., *A “New International Financial Architecture?” – Reflections on the Possible Law-Based Dimension*, in « The International Lawyer », vol. 33, no. 4, Winter 1999, pp. 891-927.

Niyungecko, Gérard, *L’impact du programme d’ajustement structurel sur le respect des droits économiques et sociaux au Burundi*, in « Revue Belge de Droit International », vol. 32, no. 1, 1999, pp. 8-18.

Oestreich, Joel E., *The Human Rights Responsibilities of the World Bank*, in « Global Social Policy », vol. 4 (I), 2004, 55-76.

Petersmann, Ernst-Ulrich, *Time for a United Nations ‘Global Compact’ for Integrating Human Rights into the Law of Worldwide Organizations: Lessons from European Integration*, in « European Journal of International Law », vol. 13, no. 3, 2002, pp. 621-650.

Rosenblum, Peter, *Pipeline Politics in Chad*, in « Current History », vol. 99, no. 637, May 2000, pp. 195-199.

Schlemmer-Schulte, Sabine, *The World Bank and Human Rights*, in « Austrian Review of International and European Law », vol. 4, 1999, pp. 230-268.

Schlemmer-Schulte, Sabine, *The World Bank’s Experience With Its Inspection Panel*, in « Zeitschrift für ausländisches öffentliches Recht und Völkerrecht », vol. 58, 1998, pp. 353-388.

Shihata, Ibrahim F. I., *La banque mondiale et les droits de l’homme*, in « Revue Belge de Droit International », vol. 32, no. 1, 1999, pp. 86-96.

Shihata, Ibrahim F. I., *The World Bank and Non-Governmental Organizations*, in « Cornell International Law Journal », vol. 25, 1992, pp. 623-642.

Skogly, Sigrun I., *Complexities in Human Rights Protection: Actors and Rights Involved in the Ogoni Conflict in Nigeria*, in « Netherlands Quarterly of Human Rights », vol. 15, no. 1, 1997, pp. 47-60.

Skogly, Sigrun I., *Structural Adjustment and Development: Human Rights – An Agenda for Change?*, in « Human Rights Quarterly », vol. 15, no. 4, November 1993, pp. 751-778.

Stiglitz, Joseph E., *Democratizing the International Monetary Fund and the World Bank: Governance and Accountability*, in « Governance: An International Journal of Policy, Administration, and Institutions », vol. 16, no.1, 2003, pp. 111-139.

II. Articles in Books

Åkermark, Sia Spiliopoulou, *International Development Finance Institutions: The World Bank and the International Monetary Fund*, in Asbjørn Eide, Catarina Krause and Allan Rosas

(eds.), *Economic, Social and Cultural Rights: A Textbook – Second Revised Edition*, Dordrecht/Boston/London, Martinus Nijhoff Publishers, 2001, pp. 515-530.

Bissel, Richard E., *The Arun III Hydroelectric Project, Nepal*, in Dana Clark, Jonathan Fox and Kay Treakle (eds.), *Demanding Accountability – Civil-Society Claims and the World Bank Inspection Panel*, Lanham/Boulder/New York/Oxford, Rowman & Littlefield Publishers, 2003, pp. 25-44.

Bloch, Anne-Christine, *Minorities and Indigenous People*, in Asbjørn Eide, Catarina Krause and Allan Rosas (eds.), *Economic, Social and Cultural Rights: A Textbook*, Dordrecht/Boston/London, Martinus Nijhoff Publishers, 1995, pp. 309-321.

Bustillo, Camilo Pérez, *Towards International Poverty Law?: The World Bank, Human Rights, and Indigenous Peoples in Latin America*, in Willem van Genugten, Paul Hunt and Susan Mathews (eds.), *World Bank, IMF and Human Rights*, Nijmegen, Wolf Legal Publishers, 2003, pp. 157-203.

Chazournes, Laurence Boisson de, *Access to Justice: The World Bank Inspection Panel*, in Gudmundur Alfredsson, Jonas Grimheden, Bertram G. Ramcharan and Alfred de Zayas (eds.), *International Human Rights Monitoring Mechanisms*, The Hague/Boston/London, Martinus Nijhoff Publishers, 2001, pp. 513-520.

Clark, Dana L., *Understanding the World Bank Inspection Panel*, in Dana Clark, Jonathan Fox and Kay Treakle (eds.), *Demanding Accountability – Civil-Society Claims and the World Bank Inspection Panel*, Lanham/Boulder/New York/Oxford, Rowman & Littlefield Publishers, 2003, pp. 1-24.

Clark, Dana L., *Singrauli: An Unfulfilled Struggle for Justice*, in Dana Clark, Jonathan Fox and Kay Treakle (eds.), *Demanding Accountability – Civil-Society Claims and the World Bank Inspection Panel*, Lanham/Boulder/New York/Oxford, Rowman & Littlefield Publishers, 2003, pp. 167-190.

Clark, Dana and Treakle, Kay, *The China Western Poverty Reduction Project*, in Dana Clark, Jonathan Fox and Kay Treakle (eds.), *Demanding Accountability – Civil-Society Claims and the World Bank Inspection Panel*, Lanham/Boulder/New York/Oxford, Rowman & Littlefield Publishers, 2003, pp. 211-246.

De Feyter, Koen, *Self-Regulation*, in Willem van Genugten, Paul Hunt and Susan Mathews (eds.), *World Bank, IMF and Human Rights*, Nijmegen, Wolf Legal Publishers, 2003, pp. 79-137.

Dulu, Majibul Huq, *The Experience of Jamuna Bridge: Issues and Perspectives*, in Dana Clark, Jonathan Fox and Kay Treakle (eds.), *Demanding Accountability – Civil-Society Claims and the World Bank Inspection Panel*, Lanham/Boulder/New York/Oxford, Rowman & Littlefield Publishers, 2003, pp. 93-114.

Eide, Asbjørn, *Globalisation and the Human Rights Agenda: The Petroleum Industry at the Crossroads*, in Asbjørn Eide, Helge Ole Bergesen and Pia Rudolfson Goyer (eds.), *Human Rights and the Oil Industry*, Antwerp-Oxford-New York, Intersentia, 2001, pp. 25-46.

Eide, Asbjørn, *Making Human Rights Universal: Achievements and Prospects*, Hugo Stokke and Arne Tostensen (eds.), *Human Rights in Development: Yearbook 1999/2000 – The Millenium Edition*, The Hague/London/Boston, Kluwer Law International and Oslo, Nordic Human Rights Publications, 2001, pp. 1-50.

Eide, Asbjørn, *The Right to an Adequate Standard of Living Including the Right to Food*, in Asbjørn Eide, Catarina Krause and Allan Rosas (eds.), *Economic, Social and Cultural Rights: A Textbook*, Dordrecht/Boston/London, Martinus Nijhoff Publishers, 1995, pp. 563-597.

Epping, Volker, *Völkerrechtssubjekte*, in Knut Ipsen (ed.), *Völkerrecht*, München, C.H. Beck, 2004, pp. 55-111.

Epping, Volker, Gloria, Christian, *Der Staat im Völkerrecht*, in Knut Ipsen (ed.), *Völkerrecht*, München, C.H. Beck, 2004, pp. 257-388.

Epping, Volker, *Internationale Organisationen*, in Knut Ipsen (ed.), *Völkerrecht*, München, C.H. Beck, 2004, pp. 444-552.

Fischer, Horst, *Friedenssicherung und friedliche Streitbeilegung*, in Knut Ipsen (ed.), *Völkerrecht* München, C.H. Beck, 2004, pp. 1065-1194.

Fortman, Bas de Gaay, *Poverty as Human Rights Deficit: Some Implications for the International Financial Institutions*, in Willem van Genugten, Paul Hunt and Susan Mathews (eds.), *World Bank, IMF and Human Rights*, Nijmegen, Wolf Legal Publishers, 2003, pp. 205-225.

Fox, Jonathan, *Transnational Civil Society Campaigns and the World Bank Inspection Panel*, in Alison Brysk (ed.), *Globalization and Human Rights*, Berkeley/Los Angeles/London, University of California Press, 2002, pp. 171-200.

Fox, Jonathan A., *When does Reform Policy Influence Practice? Lessons from the Bankwide Resettlement Review*, in Fox, Jonathan A., Brown, David L. (eds.), *The Struggle for Accountability: The World Bank, NGOs, and Grassroots Movements*, Cambridge/Massachusetts/London, MIT Press, 1998, pp. 303-344.

Ganesan, Arvind, *Human Rights, the Energy Industry, and the Relationship with Home Governments*, in Asbjørn Eide, Helge Ole Bergesen and Pia Rudolfson Goyer (eds.), *Human Rights and the Oil Industry*, Antwerp-Oxford-New York, Intersentia, 2001, pp. 47-70.

Ginther, Konrad, *International Organizations, Responsibility*, in Rudolf Bernhardt (ed.), *Encyclopedia of Public International Law*, Amsterdam et al., Elsevier, vol. 2, 1995, pp. 1336-1340.

Golsong, Heribert, *International Bank for Reconstruction and Development*, in Rudolf Bernhardt (ed.), *Encyclopedia of Public International Law*, Amsterdam et al., Elsevier, vol. 2, 1995, pp. 1057-1064.

Halvorsen, Tor, Michelsen, Gunnar Guddal, *Good Governance and Public Sector Reform: the Human Rights Consequences of Structural Adjustment Programmes*, in Hans-Otto Sano, Gudmundur Alfredsson (eds.), *Human Rights and Good Governance*, The Hague/London/New York, Martinus Nijhoff Publishers, 2002, pp. 147-172.

Heinegg, Wolff Heintschel von, *Die völkerrechtlichen Verträge als Hauptrechtsquelle des Völkerrechts*, in Knut Ipsen (ed.), *Völkerrecht*, München, C.H. Beck, 2004, pp. 112-209.

Heinegg, Wolff Heintschel von, *Die weiteren Quellen des Völkerrechts*, in Knut Ipsen (ed.), *Völkerrecht*, München, C.H. Beck, 2004, pp. 210-256.

Hennessey, Róisín, *Defining States' International Legal Obligations to Cooperate*, in Martin Scheinin, Markku Suksi (eds.), *Human Rights in Development – Yearbook 2002*, Boston/Leiden, Martinus Nijhoff Publishers, 2005, pp. 71-98.

Ipsen, Knut, *Völkerrechtliche Verantwortlichkeit und Völkerstrafrecht*, in Knut Ipsen (ed.), *Völkerrecht*, München, C.H. Beck, 2004, pp. 615-673.

Jensen, Leif, Karunaratne, Padma M., *The World Bank and its Renewed Attention to Poverty Alleviation*, in Willem van Genugten, Paul Hunt and Susan Mathews (eds.), *World Bank, IMF and Human Rights*, Nijmegen, Wolf Legal Publishers, 2003, pp. 227-246.

Jerve, Alf Morten, *Social Consequences of Development in a Human Rights Perspective: Lessons from the World Bank*, in Hugo Stokke, Arne Tostensen (eds.), *Human Rights in Development – Yearbook 1998*, The Hague/London/Boston, Kluwer Law International and Oslo, Nordic Human Rights Publications, 1999, pp. 35-66.

Kaldor, Mary, Said Yahia, *Oil and Human Rights in Azerbaijan*, in Asbjørn Eide, Helge Ole Bergesen and Pia Rudolfson Goyer (eds.), *Human Rights and the Oil Industry*, Antwerp-Oxford-New York, Intersentia, 2001, pp. 91-114.

Khan, Rahmatullah, *Sustainable development, human rights and good governance – a case study of India's Narmada Dam*, Konrad Ginther, Erik Denters, Paul J.J.M. de Waart (eds.), *Sustainable Development and Good Governance*, Dordrecht/Boston/London, Martinus Nijhoff Publishers, 1995, pp. 420-428.

Le Billon, Philippe, *The Oil Industry and the State of War in Angola*, in Asbjørn Eide, Helge Ole Bergesen and Pia Rudolfson Goyer (eds.), *Human Rights and the Oil Industry*, Antwerp-Oxford-New York, Intersentia, 2001, pp. 115-138.

Myntti Kristian, *The Right of Indigenous Peoples to Participate in Development Projects*, in Martin Scheinin, Markku Suksi (eds.), *Human Rights in Development – Yearbook 2002*, Boston/Leiden, Martinus Nijhoff Publishers, 2005, pp. 225-266.

Nayyar, Deepak, *Towards Global Governance*, in Deepak Nayyar (ed.), *Governing Globalization*, Oxford, Oxford University Press, 2002, pp. 3-18.

Ndih, Jean Ndih, *L'exploitation pétrolière au Nigeria et l'oléoduc Tchad-Cameroun*, in Aurelio Alonso Tejada et al. (eds.), *Economie et géopolitique du pétrole – Points de vue du Sud*, Louvain-la-Neuve, Centre Tricontinental and Paris, L'Harmattan, 2003, pp. 133-146.

Nordskog, Morten, Ruud, Audun, *Transnational Oil Companies and Human Rights. What they say and how they say it*, in Asbjørn Eide, Helge Ole Bergesen and Pia Rudolfson Goyer (eds.), *Human Rights and the Oil Industry*, Antwerp-Oxford-New York, Intersentia, 2001, pp. 139-160.

Nowak, Manfred, *A Human Rights Approach to Poverty*, in Martin Scheinin, Markku Suksi (eds.), *Human Rights in Development – Yearbook 2002*, Boston/Leiden, Martinus Nijhoff Publishers, 2005, pp. 15-35.

Rosas, Allan, *The Right to Development*, in Asbjørn Eide, Catarina Krause and Allan Rosas (eds.), *Economic, Social and Cultural Rights: A Textbook*, Dordrecht/Boston/London, Martinus Nijhoff Publishers, 1995, pp. 247-256.

Schermers, Henry G., *International Organizations, Legal Remedies against Acts of Organs*, in in Rudolf Bernhardt (ed.), *Encyclopedia of Public International Law*, Amsterdam et al., Elsevier, vol. 2, 1995, pp. 1318-1320.

Schröder, Meinhard, *Non-Intervention, Principle of*, in Rudolf Bernhardt (ed.), *Encyclopedia of Public International Law*, Amsterdam et al., Elsevier, vol. 3, 1997, pp. 619-622.

Sen, Amartya, *Freedom and Needs* (1994), in Robert McCorquada (ed.), *Human Rights*, Dartmouth/Ashgate, Hants/Burlington, 2003, pp. 493-504.

Sfeir-Younis, Alfredo, *Human Rights and Economic Development: Can they be Reconciled ? A View from the World Bank*, in Willem van Genugten, Paul Hunt and Susan Mathews (eds.), *World Bank, IMF and Human Rights*, Nijmegen, Wolf Legal Publishers, 2003, pp.1-43.

Skogly, Sigrun I., *The Human Rights Obligations of the World Bank and the IMF*, in Willem van Genugten, Paul Hunt and Susan Mathews (eds.), *World Bank, IMF and Human Rights*, Nijmegen, Wolf Legal Publishers, 2003, pp. 45-77.

Skogly, Sigrun I., *The Position of the World Bank and the International Monetary Fund in the Human Rights Field*, in Raija Hanski and Markku Suksi (eds.), *An Introduction to the International Protection of Human Rights: A Textbook*, Åbo, Åbo Akademi University, 1999, pp. 231-250.

Skogly, Sigrun I., *Human Rights and Economic Efficiency: The Relationship between Social Cost of Adjustment and Human Rights Protection*, in Peter Baehr, Hilde Hey, Jacqueline Smith, Theresa Swinehart (eds.), *Human Rights in Developing Countries – Yearbook 1994*, Denver/Boton, Kluwer Law International and Oslo, Nordic Human Rights Publications, 1995, pp. 43-66.

Stokke, Hugo, *What is Left of State Responsibility? Turning State Obligations into State Responsibility in the Field of Economic, Social and Cultural Rights*, in Martin Scheinin, Markku Suksi (eds.), *Human Rights in Development – Yearbook 2002*, Boston/Leiden, Martinus Nijhoff Publishers, 2005, pp.37-70.

Taylor, Celia R., *The right of participation in development projects*, in Konrad Ginther, Erik Denters, Paul J.J.M. de Waart (eds.), *Sustainable Development and Good Governance*, Dordrecht/Boston/London, Martinus Nijhoff Publishers, 1995, pp. 205-229.

Tomaševski, Katarina, *International Development Finance Agencies*, in Asbjørn Eide, Catarina Krause and Allan Rosas (eds.), *Economic, Social and Cultural Rights: A Textbook*, Dordrecht/Boston/London, Martinus Nijhoff Publishers, 1995, pp. 403-414.

Treacle, Kay, Fox, Jonathan, Clark, Dana, *Lessons Learned*, in Dana Clark, Jonathan Fox and Kay Treacle (eds.), *Demanding Accountability – Civil-Society Claims and the World Bank Inspection Panel*, Lanham/Boulder/New York/Oxford, Rowman & Littlefield Publishers, 2003, pp. 247-278.

Treacle, Kay and Peña, Elás Díaz, *Accountability at the World Bank: What Does It Take? Lessons from the Yacyretá Hydroelectric Project*, in Dana Clark, Jonathan Fox and Kay Treacle (eds.), *Demanding Accountability – Civil-Society Claims and the World Bank Inspection Panel*, Lanham/Boulder/New York/Oxford, Rowman & Littlefield Publishers, 2003, pp. 69-92.

Viera, Susana, *Sustainable development as a matter of good governance – the case of the Amazon forest in Brazil*, in Konrad Ginther, Erik Denters, Paul J.J.M. de Waart (eds.), *Sustainable Development and Good Governance*, Dordrecht/Boston/London, Martinus Nijhoff Publishers, 1995, pp. 429-440.

You, Jong-Il, *The Bretton Woods Institutions: Evolution, Reform, and Change*, in Deepak Nayyar (ed.), *Governing Globalization*, Oxford, Oxford University Press, 2002, pp. 209-237.

III. Books

Alfredsson, Gudmundur, Grimheden, Ramcharan, Jonas Bertram G. and de Zayas, Alfred (eds.), *International Human Rights Monitoring Mechanisms*, The Hague/Boston/London, Martinus Nijhoff Publishers, 2001.

Ayensu, Edward S., *Accountability at the World Bank: The Inspection Panel – 10 Years On*, Washington DC, The World Bank, 2003.

Baehr, Peter, Hey, Hilde, Smith, Jacqueline, Swinehart, Theresa (eds.), *Human Rights in Developing Countries – Yearbook 1994*, Denver/Boston, Kluwer Law International and Oslo, Nordic Human Rights Publications, 1995.

Bernhardt, Rudolf (ed.), *Encyclopedia of Public International Law*, Amsterdam et al., Elsevier, vol. 2, 1995.

Clark, Dana, Fox, Jonathan, Treacle, Kay (eds.), *Demanding Accountability – Civil-Society Claims and the World Bank Inspection Panel*, Lanham/Boulder/New York/Oxford, Rowman & Littlefield Publishers, 2003.

Darrow, Mac, *Between Light and Shadow: The World Bank, the International Monetary Fund and International Human Rights Law*, Oxford/Portland, Hart Publishing, 2003.

De Feyter, Koen, *Human Rights – Social Justice in the Age of the Market*, London, Zed, 2005.

De Feyter, Koen, *World Development Law: Sharing Responsibility for Development*, Antwerp/Groningen/Oxford, Intersentia, 2001.

Denters, Erik, Schrijver, Nico (eds.), *Reflections on International Law from the Low Countries*, The Hague/Boston/London, Martinus Nijhoff Publishers, 1998.

Dinh, Nguyen Quoc, Daillier, Patrick, Pellet, Alain, *Droit International Public*, Paris, Librairie Générale de Droit et de Jurisprudence, 1999.

Eide, Asbjørn, Bergesen, Helge Ole, Goyer, Pia Rudolfson (eds.), *Human Rights and the Oil Industry*, Antwerp-Oxford-New York, Intersentia, 2001.

Eide, Asbjørn, Krause, Catarina, Rosas, Allan (eds.), *Economic, Social and Cultural Rights: A Textbook – Second Revised Edition*, Dordrecht/Boston/London, Martinus Nijhoff Publishers, 2001.

Eide, Asbjørn, Krause, Catarina, Rosas, Allan (eds.), *Economic, Social and Cultural Rights: A Textbook*, Dordrecht/Boston/London, Martinus Nijhoff Publishers, 1995.

Fox, Jonathan A., Brown, David L. (eds.), *The Struggle for Accountability: The World Bank, NGOs, and Grassroots Movements*, Cambridge/Massachusetts/London, MIT Press, 1998.

Ginther, Konrad, Denters, Erik, de Waart Paul J.J.M. (eds.), *Sustainable Development and Good Governance*, Dordrecht/Boston/London, Martinus Nijhoff Publishers, 1995.

Hanski, Raija, Suksi, Markku (eds.), *An Introduction to the International Protection of Human Rights: A Textbook*, Åbo, Åbo Akademi University, 1999.

Ipsen, Knut (ed.), *Völkerrecht*, München, C.H. Beck, 2004.

Jägers, Nicola, *Corporate Human Rights Obligations: in Search of Accountability*, Antwerp-Oxford-New York, Intersentia, 2002.

Kapur, Devesh, Lewis, John P., Webb, Richard (eds.), *The World Bank – Its First Half Century*, Washington D.C., Brookings Institution Press, vol. I and II, 1997.

McCorquadale, Robert (ed.), *Human Rights*, Dartmouth/ Burlington, Ashgate/Hants, 2003.

Mosley, Paul, Harrigan, Jane and Toye, John, *Aid and Power – The World Bank and Policy-based Lending*, London and New York, Routledge, vol. 1, 1991.

Nayyar, Deepak (ed.), *Governing Globalization*, Oxford, Oxford University Press, 2002.

Nowak, Manfred, *Introduction to the International Human Rights Regime*, Leiden/Boston, Martinus Nijhoff Publishers, 2003.

Ergec, Rusen, *Protection Européenne et Internationale des Droits de l'homme*, Bruxelles, Bruylant, 2004.

Sands, Philippe, Klein, Pierre, *Bowett's Law of International Institutions*, London, Sweet & Maxwell, 2001.

Scheinin, Martin, Suksi, Markku (eds.), *Human Rights in Development – Yearbook 2002*, Boston/Leiden, Martinus Nijhoff Publishers, 2005.

Schermers, Henry G., Blokker, Niels M., *International Institutional Law*, Boston/Leiden, Martinus Nijhoff Publishers, 2003.

Sen, Amartya, *L'économie est une science morale*, Paris, La Découverte, 2003.

Sen, Amartya, *Development as Freedom*, Oxford, Oxford University Press, 1999.

Shihata, Ibrahim F. I., *The World Bank in a Changing World – Selected Essays and Lectures*, Dordrecht/Boston/London, Martinus Nijhoff Publishers, 1995.

Sklair, Leslie, *Globalization. Capitalism and its Alternatives*, Oxford, Oxford University Press, 2002.

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

Stokke, Hugo, Tostensen, Arne (eds.), *Human Rights in Development – Yearbook 1998*, The Hague/London/Boston, Kluwer Law International and Oslo, Nordic Human Rights Publications, 1999.

Tejada, Aurelio Alonso *et al.* (eds.), *Economie et géopolitique du pétrole – Points de vue du Sud*, Louvain-la-Neuve, Centre Tricontinental and Paris, L'Harmattan, 2003.

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

IV. Internet Sources

Brodnig, Gernot, The World Bank and Human Rights: Mission Impossible?, in « Carr Centre for Human Rights Policy Working Paper T-01-05 », 2001, pp. 1-21, at <http://www.krg.harvard.edu/cchrp/web%20working%20papers/BrodnigHR&WorldBank.pdf> (last visited 31.03.2005).

Djiraibe, Delphine, Horta, Korinna, Nguiffo, Samuel, Access to Justice from Local Village to Global Boardroom: An Experience in International Accountability – The World Bank Inspection Panel and the Chad-Cameroon Oil and Pipeline Project, 2004, at <http://www.environmentaldefense.org> (last visited, 25.05.2005).

Eviatar, Daphne, Striking it Poor: Oil as a Curse, in « New York Times », June 7, 2003, at <http://www.globalpolicy.org/soecon/bwi-wto/wbank/2003/0607oil.htm> (last visited 22.04.2005).

Gaeta, Anthony A., Vasilara, Marina, Development and Human Rights: The Role of the World Bank, Washington, The World Bank, 1998, at <http://www.worldbank.org> (last visited 14.04.2005).

Gray, Ian, Reisch, Nikki, Chad's Oil: Miracle or Mirage? Following the Money in Africa's Newest Petro-State, at <http://www.bicusa.org> (last visited 23.04.2005).

Human Rights Watch, The Price of Oil, 1999, at <http://www.hrw.org/reports/1999/nigeria> (last visited 31.03.2005).

International Federation for Human Rights, The World Bank and Human Rights, 2000, at <http://www.fidh.org> (last visited 23.03.2005).

Nguiffo, Samuel, Breitkopf Susanna, Broken Promises: The Chad Cameroon Oil and Pipeline Project ; Profit at Any Cost?, 2001, at <http://www.foei.org> (last visited 20.04.2005).

Nguiffo, Samuel, Traversing Poples Lives: How the World Bank Finances Community Disruption in Cameroon, 2002, at <http://www.foei.org> (last visited 20.04.2005).

Pegg, Scott, Réduction de la pauvreté ou exacerbation de la pauvreté: Soutien du Group de la Banque Mondiale des Industries Extractives en Afrique, 2003, at http://www.bicusa.org/bicusa/issues/Reduction_de_la_pauvrete_ou_exacerbation_de_la_pauvrete.pdf (last visited 15.06.2005).

Wolfensohn, James, A Proposal for a Comprehensive Development Framework, 1999, at <http://www.worldbank.org/cdf> (last visited 23.04.2005).

World Bank, Inspection Panel: Requests, Washington D.C., The World Bank, at <http://web.worldbank.org/WBSITE/EXTERNAL/EXTINSPECTIONPANEL/0,,contentMDK:20221606~menuPK:64129250~pagePK:64129751~piPK:64128378~theSitePK:380794,00.html> (last visited, 20.06.2005).

World Bank, Inspection Panel Annual Report 2004, Washington D.C., The World Bank, 2004, at <http://siteresources.worldbank.org/EXTINSPECTIONPANEL/Publications/20319076/AR2003-2004.pdf> (last visited 28.06.2005).