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### Conclusion: The Future of International Law and International Financial Institutions

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**CONCLUSION: THE FUTURE OF INTERNATIONAL LAW AND  
INTERNATIONAL FINANCIAL INSTITUTIONS**

Daniel D. Bradlow and David B. Hunter

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# **International Financial Institutions and International Law**



KLUWER LAW INTERNATIONAL

**International Financial Institutions  
and International Law**

Edited By

**Daniel D. Bradlow and David B. Hunter**



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# Conclusion: The Future of International Law and International Financial Institutions

*Daniel D. Bradlow and David B. Hunter*

The starting point for this book was our concern about an anomaly in the legal position of the international financial institutions (IFIs) that appeared to enable them to operate without being subjected to any effective legal control. We found this lack of legal accountability particularly troubling because of the profound, and sometimes irreversible, impact that IFI operations can have in many of those Member States that actually use their financial services.

The source of this anomaly seemed to lie in two gaps in the applicable legal regime. The first relates to the applicability of international law to the IFIs. The IFIs as international organizations are clearly subjects of international law. This would seem to indicate that their rights, responsibilities, and obligations can be defined by applicable international law and that they can be held accountable for their compliance with applicable international legal principles. However, holding the IFIs accountable under international law is difficult. Although their status as subjects of international law is clear, their substantive rights and responsibilities are not. The IFIs contend that many international legal obligations found in customary law are not applicable to them and that they are not bound by treaties to which they are not signatories. When the IFIs do recognize specific international law principles as being applicable to them, they claim the discretion to decide how

to operationalize these principles. The IFIs' position is not without some force, but it leaves uncertain the applicability of broad areas of international law, including human rights, the environment, and labour, and allows the IFIs almost unfettered discretion in deciding whether they are required to comply with particular international legal principles. Their ability to decide for themselves both with which international legal principles they will comply and how they should implement those obligations they accept is further enhanced by the fact that no obvious international forum exists in which to test the IFIs' exercise of discretion with respect to their international legal responsibilities. The result is that *de facto* international law imposes few constraints on IFI operations.

The IFIs' privileged exceptionalism under international law is compounded by the second source of the accountability gap – IFI claims to extensive immunity under domestic legal regimes. Intriguingly, the scope of IFI immunity under municipal law has expanded even as the scope of sovereign immunity has contracted. This follows from the fact that the range of their activities and the depth of their penetration into domestic policy-making has grown even as their immunity, unlike that of states, has remained constant. As the contributors to this book demonstrate, this immunity was never intended to be absolute and has been waived when the IFIs have deemed it necessary. Nevertheless, given their expanding responsibilities and scope of operations, the extent of IFI immunity from either domestic suit or some other comparable forum is becoming more problematic and a serious impediment to the full legal accountability of the IFIs. While the IFIs do have a legitimate need for some immunity, absent good justification this should not be broader than what is necessary to carry out their mandates in a way that is consistent with all their legal obligations. Such limited immunity would remove the absolute barrier that prevents all affected stakeholders from having their claims, that the IFIs should be accountable for the harm their operations cause, adjudicated in some appropriate forum, but would allow the IFIs to retain their functional immunity.

The net effect of these two gaps is that the IFIs are able to claim the power to decide for themselves what law is applicable to them, and then to act on their view of the applicable law. If, as Phillip Allott puts it: 'Law constrains or it is a travesty to call it law',<sup>1</sup> then IFIs are essentially lawless institutions.

Interestingly, international lawyers have not explored or rigorously analysed the anomalous accountability gap identified above. We embarked on this book project with the goal of seeking to fill this gap in the literature and to test our contention about the apparently lawless situation of the IFIs. As one would expect, the contributors to this volume have shown that the issue is more complex than we initially postulated, but also that the rights, responsibilities, powers, and obligations of IFIs are not at all settled and are in need of greater elaboration. Nevertheless, a number of conclusions can be drawn from the contributions to this volume.

First, it is clear that the IFIs, like all inter-governmental organizations, are subjects of international law. As such, their status, powers, and responsibilities are

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1. Philip Allott, *Eunomia: New Order for a New World* (New York: Oxford University Press Inc. 1990), Preface, xlvii.

defined by the treaties that create them – in the case of the IFIs, their Articles of Agreement. In addition, they are governed by any other international agreements to which they are signatories, for example headquarters agreements, relationship agreements, and, in the case of the multilateral development banks (MDBs), their loan agreements. Further, they are bound by applicable customary international law and by any applicable general principles of law accepted by all nations. As the contributions to this book demonstrate, there are both customary international law and general principles of law applicable to the conduct of IFIs even if they are difficult to operationalize.

Moreover, the conduct of the IFIs is constrained by those clearly defined and universally accepted international legal obligations of their Member States. As several contributors to this book recognize, it would be incongruous for the international legal system to allow Member States to create an institution that can violate legal norms that the Member States themselves cannot violate. Few would argue, for example, that Member States, feeling constrained by their obligations under international human rights law, could legally create an institution with the power to violate those same human rights. Such a situation should result in the Member States being held responsible under international law. However, this should not necessarily absolve the IFI itself from responsibility for its own actions. In fact, given the growing discretion, power, and reach of the IFIs in carrying out their expanding mission, a failure to hold the IFIs responsible for their own actions can result in the institutions, and their officers and agents, being able to act with impunity. This suggests that the IFIs have their own international legal obligations that are independent of their Member States, and that, to comply with good governance, we need to define more carefully how their responsibilities are similar to, and different from, the state's responsibilities.

Second, the international legal principles applicable to IFIs are not neutral,<sup>2</sup> they are heavily influenced by the interests and objectives of the IFIs' key Member States and by the role that those Member States want the IFIs to play in international economic governance. This is significant because, historically, the richest Member States – the United States, the Member States of the European Union, and Japan – have dominated the decision making governance structures of the IFIs, and so are able to direct decisions on issues related to how, and to what extent, international law should apply to the IFIs. However, these Member States are not directly affected by the IFIs' operational decisions. In addition, because they often seek to use the IFIs to advance their own agendas, it is not in their interest for the IFIs to be constrained by international law, except perhaps in areas relating directly to raising capital or ensuring enforcement of loan agreements. Nevertheless, their decisions have direct and important impacts within those Member States that actually use the financial services of the IFIs. This situation, in which there is a split between those Member States that have real decision-making power in the IFIs and those that are most directly affected by IFI decisions, means

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2. See, e.g., B.S. Chimni, 'International Financial Institutions and International Law: A Third World Perspective', Ch. 2 herein.



that the key decision-makers have power without responsibility. Not surprisingly, therefore, the actual decision-making process in the IFIs has distorted the evolution of international law with respect to the rights and responsibilities of the IFIs. It also suggests that relying on other means to hold the IFIs accountable under international law for their decisions and actions might both benefit affected people and mitigate the adverse consequences of the current power imbalance between those who have the most influence in the IFIs and those who actually use their services.

This conclusion is particularly pertinent at the present time when power in global economic governance seems to be shifting. The rise of new powers – for example the BRIC countries (Brazil, Russia, India, and China) – is beginning to affect the ability of the hitherto dominant powers to control the IFIs, and therefore their ability to control the IFIs' decisions on international legal issues. Given that these changes in international governance relations are still fluid and their eventual resolution difficult to predict, their impact on the IFIs' views of their international legal obligations is difficult to discern. However, there is no reason to assume that the rising powers, should they eventually gain greater say over the affairs of the IFIs, will prove any less willing to use the IFIs for their own purposes, including in regard to international law, than the current powers.

Third, and not surprisingly, the current accountability gap surrounding IFIs does not affect all stakeholders equally. Member States have both legal and political options for holding IFIs to account. Notwithstanding the significant imbalance among Member States in legal and political power within IFIs, all Member States, at least in theory, can use their 'voice and vote' in the governance structures of the IFIs, and may be able to petition international tribunals, if need be, to hold the institutions accountable. Those non-state actors who have contractual relationships with the IFIs, for example, bondholders and borrowers, also have some protections. Bondholders are able to enforce their contractual rights in national courts because the IFIs waive their immunity in their financial contracts, while borrowers of the MDBs are able to enforce their rights through the dispute settlement procedures established in the MDBs' loan or credit agreements.<sup>3</sup> Additionally, the IFIs' employees have access to internal administrative tribunals in each of the organizations.

There is, however, one important group for whom the combination of limited application of international legal principles and extensive immunity from the application of national law results in the IFIs operating essentially in a lawless vacuum – non-state actors who are not in a contractual relationship with the IFIs, but who are nonetheless directly affected by their actions. Until the relatively recent creation of independent accountability mechanisms at the MDBs,<sup>4</sup> such

3. The situation with the IMF is more complex because it claims that most of its financial transactions with its Member States are non-contractual in nature. However, the Member States do have some recourse, at least in principle, because they are able to raise their concerns through the governance structure of the IMF.

4. The World Bank established its Inspection Panel in 1993. Then in 1994, the Inter-American Development Bank established the Independent Investigation Mechanism, which was replaced



affected people had no opportunities to hold the IFIs accountable regardless of the extent of the harm they may have suffered because of these MDB operations. These people are among those who are expected to benefit from international law relating, for example, to human rights and the environment.

It is important to note that the independent accountability mechanisms at the MDBs have created a limited means of accountability for these stakeholders. These mechanisms are not empowered to offer non-state stakeholders compensation for any harm they have suffered, or to order the IFIs to change their operations or conduct. Some of the existing mechanisms have also had to undergo significant revisions because they were not sufficiently independent or effective to provide claimants with meaningful recourse. In addition, the International Monetary Fund (IMF) does not yet have such an independent accountability mechanism, and, consequently, its non-state stakeholders have no direct means of holding the IMF accountable.

The people affected by IFI operations and the civil society groups that represent them are increasingly arguing that the IFIs' anomalous international legal situation undermines their rights as recognized and protected under international law. Their voices have joined the debate formerly monopolized by the Member States and the IFIs, thus building pressure on the IFIs to reconsider their position vis-à-vis both the applicability of international law to their operations and the extent of their immunity. Traditional boundaries are starting to crumble, and, as reflected in many contributions to this volume, different strategies have emerged for dealing with the international legal anomaly associated with the IFIs.

One way to resolve the accountability gap is to strengthen and clarify the applicability of international law rules to IFIs as subjects of international law. This would necessarily help clarify the responsibilities of the IFIs under international law. This issue was discussed in the International Law Association study on accountability of international organizations and is partly the goal of the International Law Commission's (ILC's) ongoing exploration of the responsibility of international organizations under international law.<sup>5</sup> These efforts may eventually contribute to an understanding of the powers, rights, and responsibilities of international organizations. However, they are unlikely, for several reasons, to be sufficient in the near term to deal with the situation of the IFIs. First, these processes are notoriously cumbersome and slow to react to the changing nature of

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by the Independent Consultation and Investigation Mechanism in 2010. The European Bank for Reconstruction and Development's Independent Recourse Mechanism (IRM) was established in 2003, and in 2009, the Board approved the establishment of the Project Complaint Mechanism to replace the IRM. The African Development Bank's Independent Review Mechanism was approved in 2004 and its operating rules and procedures were established in 2006. The Asian Development Bank approved a new Accountability Mechanism in 2003.

5. For more information on the work of the International Law Commission as it relates to its ongoing work involving the responsibility of international organizations, see International Law Commission, Responsibility of International Organizations, <[www.un.org/law/ilc/](http://www.un.org/law/ilc/)> (follow the link for 'Responsibility of international organizations' under the Current Programme of Work heading).

international society. In addition, it often takes considerable time for their findings and recommendations to become legally binding. Second, the ILC process has stumbled by relying too heavily on state responsibility as an analogue for the responsibility of international organizations.<sup>6</sup> Although the analogy has value, over-reliance on it tends to underplay the differences between states, which are geographically defined and have general powers and responsibilities, and international organizations, which can operate across regions and national borders, but have particular structures and limited powers and mandates defined by their founding treaties. Third, most discussion of the responsibility of international organizations focuses on those institutions involved with peace and security. Much less ILC attention has been focused on IFIs whose specialized monetary, financial, and development mandates, as pointed out by several contributors to this volume, raise a number of specific issues of responsibility under international law that may not be as relevant to organizations dealing with international peace and security.

Many of the chapters in this book explore the general approaches that can be taken to clarify the international legal obligations of the IFIs. Mackay, for example, argues that principles of international law protecting the rights and interests of indigenous peoples, including their rights of free, prior, and informed consent, should be reflected in the internal policies of the IFIs.<sup>7</sup> Similarly, the core labour standards promoted by the International Labour Organization (ILO) or clear prohibitions found in international environmental law should 'constrain' at least some activities of IFIs. In recent years, the MDBs have begun responding to these approaches. For example, in some cases, they have strengthened their internal operational policies in ways that make their internal law more consistent with their international legal obligations.

Clarifying the international law obligations of IFIs will also help build coherence between the IFIs' development objectives, their operations, and their international legal obligations. This, in turn, will contribute to resolving the general challenge of fragmentation in international law – there is no logical reason why the situation of a person whose economic or social rights have been adversely affected by the acts of a state or a transnational corporation should be given more attention and protection than a similarly situated person whose rights have been adversely affected by the operations of an IFI. As explained by McInerney-Lankford, an expanded approach to human rights at the IFIs holds the promise of improving policy coherence between the twin goals of development and human rights.<sup>8</sup> Similar benefits are likely to follow from the International Finance Corporation's

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6. See José E. Alvarez, 'International Organizations: Accountability or Responsibility?', luncheon address given at the Canadian Council of International Law, 35th Annual Conference on Responsibility of Individuals, States and Organizations (Ottawa, Canada, 27 Oct. 2006), *available at* <[www.asil.org/aboutasil/documents/CCILspeech061102.pdf](http://www.asil.org/aboutasil/documents/CCILspeech061102.pdf)>.

7. Fergus Mackay, 'Indigenous Peoples and International Financial Institutions', Ch. 9 herein.

8. See Siobhán McInerney-Lankford, 'International Financial Institutions and Human Rights: Select Perspectives on Legal Obligations', Ch. 8 herein.

(IFC's) incorporation of labour standards into its performance standards;<sup>9</sup> the European Bank for Reconstruction and Development's (EBRD's) clear endorsement of free, prior, and informed consent for indigenous peoples;<sup>10</sup> and the World Bank's prohibition against funding projects that are inconsistent with a country's international environmental treaty obligations.<sup>11</sup>

Thus far, however, the IFIs' efforts at incorporating international law norms into their internal laws has been somewhat ad hoc responding to areas where civil society has been able to organize significant pressure on them. Thus, the IFIs have never clearly stated that their policies will comply with all applicable international law. Instead they have only made commitments in rather specialized and limited contexts, for example in the environmental area. Such actions tend to reinforce the view that they alone will determine what law applies to them and how it should apply. Recent developments with respect to IFI policies relating to human rights, including labour rights and the rights of indigenous peoples, suggest that the IFIs are recognizing that their position on their international legal obligations is problematic. They also raise hopes that the IFIs may move more decisively in the future to define their human rights and related responsibilities.

One necessary consequence of the IFIs acknowledging their international legal obligations will be a re-invigoration of efforts to strengthen the mechanisms for reviewing IFI compliance, particularly given their continued immunity from national courts. As noted above, all of the MDBs have created internal accountability mechanisms, albeit exhibiting different degrees of independence and effectiveness. As pointed out by several authors in this volume, strengthening the existing internal accountability mechanisms (e.g., the World Bank Inspection Panel or similar institutions) is one way to improve IFI accountability. Suzuki, for example, suggests expanding the function of existing administrative tribunals that currently issue binding decisions with respect to complaints from IFI employees to incorporate other categories of complaints.<sup>12</sup> He argues that these tribunals should also issue binding decisions on appeals that third-party complainants

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9. See IFC, *International Finance Corporation's Performance Standards on Social & Environmental Sustainability*, 'Performance Standard 2: Labor and Working Conditions' (30 Apr. 2006), 7–10, available at <[www.ifc.org/ifcext/sustainability.nsf/AttachmentsByTitle/pol\\_PerformanceStandards2006\\_full/\\$FILE/IFC+Performance+Standards.pdf](http://www.ifc.org/ifcext/sustainability.nsf/AttachmentsByTitle/pol_PerformanceStandards2006_full/$FILE/IFC+Performance+Standards.pdf)>.

10. See European Bank for Reconstruction and Development, *Environment and Social Policy*, 'PR 7: Indigenous Peoples' (May 2008), 50–57, available at <[www.ebrd.com/about/policies/enviro/policy/2008policy.pdf](http://www.ebrd.com/about/policies/enviro/policy/2008policy.pdf)>.

11. See World Bank, 'OP 4.01: Environmental Assessment' (January 1999), available at <<http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/EXTPOLICIES/EXTOPMANUAL/0,,contentMDK:20064724~menuPK:64701637~pagePK:64709096~piPK:64709108~theSitePK:502184,00.html>>; see also Charles E. Di Leva, 'International Environmental Law, The World Bank, and International Financial Institutions', Ch. 11 herein.

12. See Eisuke Suzuki, 'Responsibility of International Financial Institutions under International Law', Ch. 3 herein.

submit to existing accountability mechanisms.<sup>13</sup> Chimni also calls for strengthening the legal basis and effect of the existing accountability mechanisms.<sup>14</sup>

These efforts to close the accountability gap at the international level should complement (and not be a substitute for) efforts to close the gap from the bottom-up – i.e., by reviewing the scope and extent of IFI immunity in national courts. In this respect, as implied by Reinisch and Wurm, and as recommended by Herz, the role of domestic courts should be expanded to accommodate the accountability of IFIs to non-state actors. As these chapters explain, the IFIs' claim to absolute immunity has not gone unchallenged, even if the IFIs have thus far prevailed in most cases. As these chapters show, the trend is against absolute immunity for international organizations, just as it is for states. Some courts, before agreeing to dismiss a case on grounds of an international organization's immunity, are inquiring into whether an adequate alternate forum exists. In their chapter, Reinisch and Wurm embrace recent national jurisprudence that suggests equity and fairness should defeat the IFIs' need for immunity, at least when third parties who are wronged by an IFI's activities have no other legal recourse.<sup>15</sup> Herz agrees and argues further that the purposes and scope of the IFIs' functional immunity should be narrowed over time to allow such third parties to bring actions in national courts.<sup>16</sup>

Of course, defining the international responsibility of the IFIs or extending national jurisdiction over their actions does not obviate the need for states to fulfil their own obligations under international law in their relations with IFIs. As McInerney-Lankford argues, some portion of the international legal responsibility gap surrounding IFIs can be filled indirectly by ensuring that states fulfil their own international obligations when they participate in IFI activities – either as donors or borrowers. State responsibility for their own behaviour in the governance and operations of IFIs is also an area that could benefit from further elaboration and development. Addressing the issue of international legal responsibility from the perspective of both the state and the IFIs should help ensure that neither states nor IFIs are complicit in international law violations committed by the other.

An important issue in regard to this discussion, which is addressed in the chapters by Bradlow and by Hunter,<sup>17</sup> is the recognition that the IFIs are not just passive recipients of rights and obligations under international law. Through their internal operational policies and directives and their decisions and actions they are often forced to deal with questions that raise unsettled international legal issues. Their efforts to resolve or address these matters necessarily results in them

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13. *Ibid.*

14. See B.S. Chimni, 'International Financial Institutions and International Law: A Third World Perspective', Ch. 2 herein.

15. See August Reinisch & Jakob Wurm, 'International Financial Institutions before National Courts', Ch. 4 herein.

16. See Steven Herz, 'Rethinking International Financial Institution Immunity', Ch. 5 herein.

17. See Daniel D. Bradlow, 'International Law and the Operations of International Financial Institutions', Ch. 1 herein; David B. Hunter, 'International Law and Public Participation in Policy-Making at the International Financial Institutions', Ch. 7 herein.

becoming actively engaged in the creation of the international law applicable to these issues. Examples of topics in which the IFIs are helping to shape the applicable international legal principles are the rights of indigenous people; international human rights law and development; the relationship between international organizations, states, and non-state actors; and the environment. The relevant substantive international legal principles relating to these topics and their application to the IFIs are discussed in a number of chapters in this book – for example, Mackay, McInerney-Lankford, and Di Leva.<sup>18</sup> In all these cases, the IFIs' policies and actions are both shaped by and help shape the relevant international legal principles. While the IFIs' actions and decisions may not set binding international legal principles in these areas, they do constitute informative and persuasive examples that other international legal subjects use in formulating their own decisions and positions on these issues. In this way, they are contributing to the accretion of precedents that inform the creation of international customary law and the principles incorporated into international agreements. In some cases, the IFIs' policies and actions create expectations about the type of treatment that stakeholders can expect in certain circumstances, thereby helping to create applicable soft international law that can affect the expectations of these same categories of stakeholders in their dealings with other economic actors. An example is the way in which the IFC's performance standards are influencing the expectations relating to, and the conduct of, transnational banks.

The decisions of the independent accountability mechanisms are of particular interest in this regard. Although not adjudicatory bodies, findings by the Inspection Panel and the other accountability mechanisms necessarily depend on interpretations of the institutions' operational policies. As pointed out by both McInerney-Lankford and Di Leva, the MDBs' operating policies often implicitly reflect norms of international law. In some cases, the Inspection Panel has also explicitly referenced relevant international legal principles, norms, and standards in making these interpretations.<sup>19</sup> In this way, the accountability mechanisms' findings, and

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18. See respectively, Fergus Mackay, 'Indigenous Peoples and International Financial Institutions', Ch. 9 herein; Siobhán McInerney-Lankford, 'International Financial Institutions and Human Rights: Select Perspectives on Legal Obligations', Ch. 8 herein; Charles E. Di Leva, 'International Environmental Law, the World Bank, and International Financial Institutions', Ch. 11 herein.

19. For a general discussion of the World Bank Inspection Panel reports and international law, see Andria Naudé Fourie, *The World Bank Inspection Panel and Quasi-Judicial Oversight: In Search of the 'Judicial Spirit' in Public International Law* (Utrecht: Eleven International Publishing, 2009). For a detailed discussion of the World Bank Inspection Panel reports regarding human rights violations resulting from projects in Chad and Honduras, see Steven Herz & Anne Perrault, 'Bringing Human Rights Claims to the World Bank Inspection Panel' (October 2009), available at <[www.accountabilityproject.org/downloads/Inspection%20Panel%20and%20Human%20Rights%20Oct09.pdf](http://www.accountabilityproject.org/downloads/Inspection%20Panel%20and%20Human%20Rights%20Oct09.pdf)>. Herz and Perrault discuss the *Honduras: Land Administration Project* (2007) claim, which marked the first time the Inspection Panel addressed a claim based on international human rights law. The Panel recognized that its mandate only related to questions of compliance with the Bank's operating policies, but found that these policies mandated the Bank comply with provisions relating to human rights that are in the

the sometimes legalistic responses of management, are creating a dialogue that can contribute to the progressive development of the international law applicable in the context of IFI operations.<sup>20</sup>

The evolving role that the IFIs play in the creation of international law highlights the relevance to international law of not only the substance of their internal operating rules, but also their internal rule-making procedures, as has been discussed in some detail in the chapter by Hunter.<sup>21</sup> While the substance of their rules is shaped by and helps shape international law in some areas, their internal rule-making procedures are in many ways path-breaking and establishing important precedents in international administrative law. The IFIs have led the way in creating rule-making procedures that are relatively transparent and participatory. The result is operating rules and procedures that have created expectations and facilitated more communication between IFIs and the stakeholders who are most affected by their operations. Hopefully, other international organizations will learn from their examples. In addition, these procedures are deserving of more study so that we better understand their role in international law creation, particularly in creating law that can constrain the IFIs in the future.

The role of IFIs in the progressive development of international law is not limited to their internal operational policies and procedures, however, as they are also both deliberately and coincidentally shaping state practice in the context of development. As suggested by both McNerney-Lankford and Di Leva, the World Bank, in particular, sees itself as a significant player in helping countries meet their international obligations.<sup>22</sup> What these authors say about human rights and environmental law, respectively, can also be true more generally of international law. For example, the IFIs view strengthening the rule of law as a critical step in maintaining a climate conducive for development. In this context, it is important that the IFIs make sure that their advice is consistent with their own practices.

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international agreements applicable to the project. Herz & Perrault, *supra* n. 19, 4. Similarly, the Inspection Panel in Chad, the *Chad: Petroleum Development and Pipeline Project* (2002), determined that the Bank had to consider international human rights principles when they 'impede the implementation of the Project in a manner compatible with the Bank's policies' and not just when they have a 'significant direct economic effect on the project'. *Ibid.*, 5–6. Further the Inspection Panel here found that the Bank neglected to consider the Democratic Republic of Congo's (DRC) obligations under the Convention for the Protection of the World Cultural and Natural Heritage (World Heritage Convention) and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), in *Democratic Republic of Congo: Transitional Support for Economic Recovery Credit and Emergency Economic and Social Reunification Support Project* (2007), available at <<http://siteresources.worldbank.org/EXTINSPECTIONPANEL/Resources/FINALINVREPwhole.pdf>>. Thus, the Inspection Panel has routinely referred to international law when determining whether the Bank has complied with its operational policies.

20. Herz & Perrault, *supra* n. 19.

21. See David B. Hunter, 'International Law and Public Participation in Policy-Making at the International Financial Institutions', Ch. 7 herein.

22. See Siobhán McNerney-Lankford, 'International Financial Institutions and Human Rights: Select Perspectives on Legal Obligations', Ch. 8 herein; Charles E. Di Leva, 'International Environmental Law, The World Bank, and International Financial Institutions', Ch. 11 herein.



This means that they need to ensure that their operations within a country lead by example and comply with applicable international and domestic laws.

A rising number of voices (including many in this volume) are calling for increased exploration of the responsibility of IFIs under international law. The IFIs themselves should become even more active participants in this debate. In this regard, the IFIs, as well as international legal scholars and activists should systematically review the wide range of international law fields that are relevant to the mission of the IFIs in order to identify applicable international legal principles and to determine how they can most effectively be implemented in the work and policies of the IFIs. They should also engage in debates about how the IFIs can be accountable for their compliance with all their international responsibilities.

This book reveals both the complexity and the potential value of such a dialogue over the relationship of international law and IFIs. It is our hope that the book will stimulate the IFIs and all the stakeholders in their operations to actively participate in this dialogue.

