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CONFERENCE ON HUMAN RIGHTS, PUBLIC FINANCE, AND THE DEVELOPMENT PROCESS

MULTILATERAL FINANCING INSTITUTIONS: WHAT FORM OF ACCOUNTABILITY?

Jerome Levinson*

In August of 1982, Mexico defaulted on the payment of its debt service obligations.¹ This default caused a debt crisis which involved most international banks.² As a result of this crisis, the private commercial banks are unlikely to be a significant source of new net financing for development purposes.

The basic business of Multilateral Financing Agencies (MFAs) is to lend money for specific projects and programs³ to borrowing member countries which will, in turn, stimulate higher economic growth rates.⁴ As part of the conditions for such lending, the MFAs increasingly require that the institutions (and their governments) which borrow the money implement economic reforms.⁵ Thus, the multilateral lending in-

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1. See Robert L. Morgan, et al., *Legal Issues Arising from the Mexican Economic Crisis*, 17 VAND. J. TRANSNAT'L L. 367, 385 (1984) (illustrating the factors which contributed to the Mexican debt crisis) [hereinafter *Mexican Crisis*]; see also Alberto Gonzales Santos, *Beyond Baker and Brady: Deeper Debt Reduction for Latin American Sovereign Debtors*, 66 N.Y.U. L. REV. 66 (1991) (stating that of the US 500 billion dollars owed by sovereign states, US 442.4 billion dollars was from Latin American countries).

2. See *Mexican Crisis*, *supra* note 1, at 385 (portraying the effects the Mexican debt crisis had on lending institutions).

3. See Articles of Agreement of the International Bank for Reconstruction and Development, Dec. 27, 1944, art. III, §4(vii), 60 Stat. 1440, 1452, 2 U.N.T.S. 134, 164-66 [hereinafter IBRD Agreement] (stating that, "[l]oans made. . . by the bank, shall. . . be for the purpose of specific projects . . .").

4. W.C. Baum, *The Project Cycle*, in INTERNATIONAL BORROWING (D.D. Bradlow ed., 1986).

5. See I.F. SHIHATA, THE WORLD BANK IN A CHANGING WORLD 25-31 (1991) [hereinafter SHIHATA, CHANGING WORLD] (describing how the lending institutions at-

stitutions are not only concerned with assuring repayment of the loans; they are also concerned with how a particular loan impacts the country's economy and the government's implementations of economic policies.⁶

Increasingly, the issues which have evolved are: (a) to whom are these institutions accountable; (b) who defines the "conditionality" which attaches to the lending; and, (c) who defines the process by which the conditions are negotiated. Latin America illustrates the nature of these issues.

I. THE TRADITIONAL DIVIDE

Traditionally, the great philosophical divide in Latin America, and the cause of friction between the Latin American countries and the International Monetary Fund (IMF or Fund) and the International Bank for Reconstruction and Development (IBRD or World Bank), was over the basic development strategy of the borrowing member countries.⁷ Since the end of World War II, the Latin American countries generally adopted a strategy of economic growth based upon: import substitution; a large role for the state in public sector financing, particularly industrial development; and, the use of subsidies to favor particular sectors believed to warrant priority financing.⁸ In the three decades encompassing the 1950s through the 1970s, this model succeeded in creating a sizeable middle class and a strong indigenous industrial sector, particularly in Brazil and Mexico.⁹ This plan turned out to be more internationally competitive than anyone had thought possible.

This strategy, however, also had fundamental defects. First, it failed to secure a reliable domestic revenue base. Second, it relied increasingly upon capital intensive infrastructure financed by borrowing from

tempt to strengthen the overall economy of the borrowing countries by encouraging economic and bureaucratic reform).

6. *Id.*

7. See Letter from Gustavo Petricoli, Mexican Minister of Finance, to Jacques de Larosiere, Managing Director of IMF (July 22, 1986) in *Recent Developments* 28 HARV. INT'L L.J. 107, 157 (1987) (describing the past tensions between the IMF and Mexico).

8. See generally, LATIN AMERICAN DEBT CRISIS: ADJUSTING TO THE PAST OR PLANNING FOR THE FUTURE (Robert Pastor ed., 1987) (providing a brief history of the Latin American debt since the beginning of the nineteenth century).

9. See Comment, Ursula Wassermann, *Latin American Debt Crisis*, 18 J. OF WORLD TRADE L. 342 (1982) (describing the strong economic development in Latin American countries during this period); see also SHIHATA, *CHANGING WORLD*, *supra* note 5, at 15 (illustrating the increase in global Gross Domestic Product by all developing countries as a result of the loans and programs of the IMF).

internal and external sources.¹⁰ Third, it also failed to effectively address the social imbalance within each society. Such imbalances were caused by: rural and tenure systems which concentrated ownership in a very small portion of the rural population; education systems which siphoned out many children of the poor at the secondary level and failed to enroll them in the primary system; and health delivery systems which failed to reach great majorities of the population.¹¹ The end result was internal migration of landless laborers to large metropolitan centers, overburdening social services, or, as in the case of Brazil, migrating to frontier areas with devastating effects on the environment.¹² The great borrowing binge of the 1970s revealed the defects inherent in this model of development.

During the 1980s two fundamental changes occurred. First, democratically elected governments became the rule in Latin America.¹³ Second, a "silent revolution" in thinking occurred within a broad range of Latin American societies. This revolution accentuated the need for fundamental change in the existing economic model, requiring: a diminished role of the state in direct production of goods and services, and less reliance on subsidies and more on market forces, as well as a need for integration into the world economy.¹⁴ The details and emphasis in individual countries varied, however, in general, the great philosophical divide which had separated the Latin American leadership from that of the World Bank and IMF closed.

An agreement with the IMF (and World Bank) is a precondition not only for a lending program with the multilateral lending institutions,

10. See *Mexican Crisis*, *supra* note 1, at 385-86 (describing the surge in Mexican borrowing during the 1970s).

11. See, e.g., *The Political Economy of Democratization*, 15/2 THE WASHINGTON QUARTERLY 187 (Spring 1992) (describing the inadequacy of the provision of basic services to a broad sector of the Mexican population).

12. See Giaimo, *Deforestation in Brazil: Domestic Political Imperative—Global Environmental Disaster*, 18 ENVTL. L. 537, 540 (1990) (explaining the factors which contributed to the massive migration of Brazilians to the Amazon regions).

13. See Irwin P. Stotzky, *The Fragile Bloom of Democracy*, 44 U. MIAMI L. REV. 105 (1989) (describing the major issues raised by the Latin American transition to democracy); see also Carlos Santiago Nino, *Transition to Democracy, Corporation and Constitutional Reform in Latin America*, 44 U. MIAMI L. REV. 129 (1989) (illustrating the basic problems surrounding the emergence of Latin American democracies).

14. See Kim Reisman, *The World Bank and the IMF: At the Forefront of World Transformation*, 60 FORDHAM L. REV. 349, 377 (1992) (portraying the success of the Mexican efforts at privatization and internationalization of the economy); see also SHIHATA, *CHANGING WORLD*, *supra* note 5, at 30 (stating that many developing countries have been expanding the role of the private sector and of market forces in an effort to diminish their foreign debt).

but also for a debt restructuring agreement with commercial banks.¹⁵ In the first instance, the international financial community's definition of priorities is communicated to the borrowing country through the IMF. The following discussion analyzes these priorities.

II. COUNTRY PERFORMANCE

The most important factor considered by multilateral lending institutions is macroeconomic reform including fiscal, monetary, and exchange-rate policy, as well as a recent emphasis toward market liberalization and privatization.¹⁶ Of secondary importance are social reforms such as land tenure changes, broadened access to education, health care and contraception, and political democracy through multiparty elections absent human rights abuses.¹⁷ For example, international financing agencies look favorably toward a country which makes rapid progress toward market liberalization even though that country abuses its political democracy and violated human rights. Conversely, these agencies do not cater to a country with mediocre macroeconomic performance, even though it may be making a serious effort at social reform in order to establish a solid base for growth.

Chile is a leading example of this dichotomy. Under the leadership of former dictator General Augusto Pinochet, Chile was rewarded with extensive financing from the multilateral financing agencies.¹⁸ Nicaragua, in contrast, became an outcast, due partly to the Reagan Administration's determination to bring down the Sandinista regime because of Cuban and Soviet influences.¹⁹

The IMF, World Bank and Inter-American Development Bank (IDB) increasingly incorporate short-term social measures into specific

15. See, e.g., Reisman, *supra* note 14, at 373 (describing how, under President Bush's Enterprise for the Americas' Initiative, borrowing countries must reach an agreement with the IMF to participate in debt relief programs).

16. See SHIHATA, *CHANGING WORLD*, *supra* note 5, at 30 (listing the policy, regulatory and institutional level goals of the World Bank).

17. See SHIHATA, *CHANGING WORLD*, *supra* note 5, at 33 (covering World Bank efforts to alleviate poverty, especially with regard to women); see also Memorandum from the Vice President and General Counsel of the World Bank, (Dec. 21, 1990) [hereinafter World Bank Memorandum] (entitled, "Issues of Governance in Borrowing Members: The Extent of Their Relevance Under the Bank's Articles of Agreement").

18. See Reisman, *supra* note 14, at 376 (discussing Chile's success at privatization and trade liberalization since the Pinochet Government took power).

19. See Jerome I. Levinson, *End of an Era: The Seamless Web of American Foreign Policy* 29-30 (Oct. 1990) (unpublished manuscript, on file with the Author) [hereinafter *End of an Era*] (noting the World Bank's consideration of United States interests with regard to loans to Chile and Nicaragua). Nicaragua was, of course, a special case. *Id.*

economic plans in order to cushion a country's adjustment. In judging whether a major international financing program is warranted in a borrowing country, however, these institutions have not explicitly considered the extent that a country is addressing what Hannah Arendt referred to as the problem of poverty, understood as the existence of conditions of dehumanizing misery.²⁰ This condition breeds the passion of compassion, a sentiment underlying the revolutionary impulse that predates Marxism.²¹

This relatively limited approach to the definition of development reflects the fact that the problem of development has historically been remedied by fostering economic growth. In the decade of the 1960s, other broader considerations such as social equity and political democracy were factored into the development dialogue.²² More recently, environmental concerns and popular participation have emerged as important considerations.²³

Organizationally and conceptually, the United States government primarily perceives the definition of "country performance" as a financial and economic matter. Other considerations are decidedly of a secondary nature, if they enter into the discussion at all. These other considerations may assume more importance if the United States Congress or nongovernmental organizations (NGOs) apply strong political pressure. Such pressure has been particularly effective with respect to environmental questions.

III. AN EXAMPLE: MEXICO

To take a contemporary example, the United States government considers Mexico to be outstanding in its "country performance."²⁴ Mex-

20. HANNAH ARENDT, *ON REVOLUTION* 54 (1963).

21. *Id.* at 53-55.

22. See *Sisters in the Wood: A Survey of the IMF and the World Bank*, *THE ECONOMIST*, Oct. 12-18, 1991, at 9 (addressing the World Bank's support of farming, education, population control and urban development during the 1960s).

23. See SHIHATA, *CHANGING WORLD*, *supra* note 5, at 31-33 (explaining the World Bank's efforts to incorporate environmental issues into the development process); see also Task Force on Governance for the International Bank for Reconstruction and Development: the Governance Dimension 33 (June 26, 1991) (on file with the Author) [hereinafter *Governance Paper*] (recognizing the importance of popular participation in the successful implementation of economic, environmental and social policy).

24. See FEDERAL NEWS SERVICE, *Third World Debt: Hearing of the Int'l Finance and Monetary Policy Subcom. of the Senate Banking, Housing and Urban Affairs Comm.* 100th Cong., 1st Sess. (1990) (statement of David Mulford, Under Secretary, U.S. Dept. of Treasury) (explaining Mexico's new economic plan designed to achieve significant debt reduction, produce economic growth and yield other economic benefits).

ico's economic performance has produced impressive results. Between 1982 and 1990, Mexico turned a budget deficit equal to approximately seven percent (7%) of its gross domestic product into a surplus equal to eight percent (8%), and privatized close to seventy-five percent (75%) of all government industries.²⁵ Today, one and seven-tenths percent (1.7%) of the goods imported into the country require licenses, down from one-hundred percent (100%) in 1982,²⁶ and the maximum tariff has been slashed to twenty percent (20%) from one-hundred percent (100%).²⁷ In 1990, Mexico's real domestic product expanded more than three percent (3%) for the second year in a row, and exports to the United States have risen seventy-two percent (72%) since 1986.²⁸ Inflation dropped from a peak of one-hundred and eighty percent (180%) in 1988 to an estimated annual rate of less than twenty percent (20%) in 1991.²⁹

Mexican President Carlos Salinas de Gortari has coupled the economic performance with an ambitious social infrastructure investment program termed "Solidarity."³⁰ Through this program, communities decide upon the priority of local investment, the government contributes a part of the investment and local committees oversee the execution of the construction.³¹ The program has been the fastest growing part of the budget, albeit from a relatively low base. It has been politically advantageous for the governing party, the Partido Revolucionario Institucional (Institutional Revolutionary Party (PRI)), but there is no doubt it likewise contributes to improving services and basic amenities such as potable water and sewerage facilities in communities lacking them in the past.³²

The key to the economic success is the combination of a wage policy and a firm grip on the unions. The PRI control over the unions permits the continuation of a price and wage restraint pact between the party

25. 1990 *National Trade Data Bank*, MARKET REPORTS, Dec. 1990.

26. *Id.*

27. *Id.* See also *Country Outlooks - Mexico 1990*, BANK OF AM. NT & SA WORLD INFO. SERV., June 1990 (concluding that reducing tariff requirements encourages foreign investments in Mexico).

28. *Id.*

29. Linda Robinson & Andrea Dabrowski, *The Unfinished Revolution*, U.S. NEWS & WORLD REPORT, July 27, 1992, at 45.

30. See *Mexico's President Touts Economic Reform*, UPI, Nov. 1, 1991 (LEXIS, Lexis Library, UPI File) (describing Mexico's accumulation of funds to operate this self-help program).

31. David Clark Scott, *Mexico's Public-Works Program Bolsters President As It Aids the Poor*, CHRISTIAN SCIENCE MONITOR, Sept. 16, 1992.

32. *Id.*

and the employees.³³ This is an essential tenet to the economic strategy.³⁴ In practice, what this relatively bland statement means is that real average wages since 1982 have declined by fifty percent (50%).³⁵ As a consequence of this wage policy, Mexico's labor force is extremely competitive in terms of relative wages with Asian countries.³⁶ In case there are any doubts concerning the continuation of the wage policy, a report prepared by the United States Embassy in Mexico City notes that the Mexican Minister of Labor, Arsenio Farrell Cubillas, maintains his opposition to labor, and his efforts to restrain labor's demands for wage increases.³⁷

In pursuing its objective of privatizing state-owned companies, the Mexican government uses a variety of strong-arm tactics³⁸ to overcome labor's opposition to a change in contractual conditions. A change which the government considers necessary as a precondition to selling the enterprises to private interests. The United States Embassy report cites, for example, the forced bankruptcy of a Cananean company, including the use of soldiers to enforce the company's closure, after workers threatened to strike in support of collective bargaining.³⁹ Similar pressure tactics were used by the government in the bankruptcy of Aero Mexico.⁴⁰

The privatization program moreover also led to a concentration of economic power in key sectors of the economy. A report by the United States International Trade Commission (ITC) notes, with respect to the Mexican privatization program, that most parastatal enterprises became part of large consortia formerly competing with the state in an

33. Robert Graham, *Early Success in the Laboratory*, FIN. TIMES, Oct. 20, 1989, at 22.

34. *Id.*

35. Gregory P. Shaffer, *An Alternative to Unilateral Immigration Controls: Toward a Coordinated U.S.-Mexico Binational Approach*, 41 STAN. L. REV. 187 (1988); L. Mertens & P.J. Richards, *Recession and Employment in Mexico*, 126 INT'L LAB. REV. 229 (1987); G. Bowens, *How Do You Compete With \$1-an-Hour Wages?* 4 BUSINESS WEEK, Mar. 16, 1992, at 103; Sidney Weintraub, *Jobs on the Line*, BUSINESS MEXICO, Mar. 1991, at 10.

36. Patricia Capdevielle, *International Comparisons of Competition Costs*, 114 MONTHLY LAB. REV. 34 (Aug. 1991).

37. United States Embassy to Mexico, *Mexican Labor Trends: An Annual Report for Mexico for 1988 to Mid-1990 (1990)* (unpublished report, on file with the Author) [hereinafter *Mexican Labor Trends*].

38. See *id.* at 11-13 (describing Mexican government declarations that strikes are "illegal," dissolution of union leadership, military intervention in areas of labor unrest, forced bankruptcy proceedings and required revisions of labor contracts according to government guidelines).

39. *Id.* at 13.

40. *Id.* at 13.

effort to consolidate the market.⁴¹ Even supporters of Salinas concede that the government's privatization program tends to replace state monopolies with private ones, rather than promote competition.⁴²

In part, the design of the privatization program has been driven by the need to obtain revenues to cover the fiscal and balance of payments deficits, and to permit needed investment in neglected areas of social infrastructure, such as, education and health. The relative lack of concern with monopolistic and oligopolistic trends in the program is explained by the anticipated North American Free Trade Agreement (NAFTA) as, the perceived necessity to equip Mexican industry and finance with the muscle to confront anticipated competition from American and Canadian multinational companies and banks.⁴³

Moreover, it can be argued that both the import liberalization, and more open regime governing foreign investment, constitute a break on whatever abuses may be implied in the greater concentration of economic power within the Mexican domestic industry and banking structure. Given these caveats, however, it still remains true that the coercive Mexican labor relations structure and regressive wage policy, coupled with the increased concentration of economic power, ought to raise major issues for discussion, especially since the Mexican "model" is one which is constantly recommended for countries in Eastern Europe and Latin America to emulate.⁴⁴

Unfortunately, such a debate is unlikely to take place within the MFAs. The economic model which they have endorsed has depended, to a significant degree, on precisely the type of coercive labor relations structure and regressive wage policies which underlie the performance of Mexico.⁴⁵ These coercive labor relations and structures, and regressive wage policies existed in Chile under the Pinochet regime and under the military dictatorship in South Korea during the decades of the 1970s and 1980s. And during those decades, Chile and South Korea were admired within the MFAs for their economic performance.⁴⁶

41. *Review of Trade and Investment Liberalization Measures by Mexico and Prospects for Future United States Mexican Relations*, USITC Pub. 2275, Inv. No. 332-282, Pub. 2275 (Apr. 1990), pp. 3-10.

42. Andrea Dabrowski, *Mexico's Privatization Plan Under Pressure*, THE WASH. POST, Sept. 3, 1991, at E1.

43. *Id.*

44. Bill Javetski & Stephen Baker, *Can Mexico Embrace the U.S. — at Arm's Length?*, BUSINESS WEEK, May 20, 1991, at 63.

45. Donal McCarthy, *Fine Tuning the Options*, BUSINESS MEXICO, June 1990, at 76.

46. See SHIHATA, *CHANGING WORLD*, *supra* note 5 (describing the success of Chile as a country that received high marks for its macroeconomic performance under the leadership of former dictator General Augusto Pinochet).

Labor relations structure is rarely addressed within these organizations. In fact, if it is discussed at all, labor relations structure is usually presented from the limited viewpoint of how to restrain the "excesses" of wage and benefit demands of workers, rather than the regressive income distribution implicit in the economic model that constitutes the economic orthodoxy of the day.

Previously, the United Nations Economic Commission for Latin America (ECLA) and the regional development bank for the region, the IDB, constituted a rallying point for addressing questions of development strategy.⁴⁷ Today, however, that kind of debate could not take place because the IDB and ECLA share the same orthodoxy currently prevailing in the MFAs.

This does not mean that orthodox economic policy prescriptions are always wrong, or that the MFAs are "imposing" their own policy prescriptions upon the defenseless countries. Instead, the result is a stifling monolithic orthodoxy that bars skeptical questioning of country performance that otherwise would raise issues about the Mexican experience and its applicability in other circumstances. In commenting on Latin America, Michel Camdessus, Managing Director of the IMF, observed that a "Silent Revolution" has taken place that largely closed the policy gap with the MFAs.⁴⁸

It is obvious upon examination of the conditionality that attaches to the agricultural sector loans of the MFAs, that they rarely touch upon questions of land tenure ownership. Rather, they concentrate on commitments to reduce subsidies and interest rates for credit above the rate of inflation (real rates), and other efficiency factors.⁴⁹ Recent scholarship, however, gives great weight to the implementation of effective

47. See End of an Era, *supra* note 19, at 3-8 (stating that the IDB was created as an instrument for financing industrial development in Latin America and as a reaction to the orthodox economic policy of the World Bank and the IMF). For example, within the IDB a lively debate took place over strategy towards Peru during the administration of the APRA government of Alan Garcia. *Id.* Questions debated included: Was it wise, right or just, to cut off all financing when the macroeconomic performance is poor? Is there a case to be made for selective financing for basic services such as potable water and sewerage services? Is it fair to other borrowing countries who have taken tough decisions with respect to budget deficits and monetary policy? If such facilities had continued to be financed, would Peru have had the cholera epidemic that it did, or would it have been as severe? *Id.*

48. See *NAFTA Will Not Keep Mexico From Pursuing Other Commercial Ties*, IMF Director Says, Notimex Mexican News Service, Mar. 6, 1992 (LEXIS, Nexis Library, Current File) (discussing positive steps taken by Latin America toward trade relations with Europe and Japan).

49. See End of an Era, *supra* note 19, at 7 (noting that the IDB imposed conditions upon its loans in areas that directly impacted upon the "financial viability of the borrowing enterprises").

agrarian reform programs in Asian countries, such as, South Korea and Taiwan in accounting for their economic performance.⁵⁰

It is no surprise then, that the most serious challenge to the existing orthodoxy is coming from the United Nations Economic Commission for Africa (UNECA) and not from within the MFAs themselves or from within the regional organizations for Latin America.⁵¹ UNECA questioned whether the structural adjustment programs of the World Bank were in the best interests of the African nations.⁵² The gravamen of the complaint was that the investment needs of the African countries were sacrificed to the short-term adjustment programs promoted by the World Bank and the IMF.⁵³

Due to the sacrifice of education, health, and infrastructure financing to achieve fiscal objectives, the African countries fell further behind in human resource development. The result of the lag in human resource development is ultimately determining whether the African nations can compete in the modern international economy.⁵⁴ The debate surrounding the United Nations Report afforded the borrowing member countries of the World Bank a rare opportunity to hold an MFA accountable for its strategic conception of "country performance."⁵⁵

IV. SECTOR LENDING AND SECTOR STRUCTURAL ADJUSTMENT

The traditional form of lending in the MFAs was project lending related to the execution of specific work, or programs that could be

50. See William C. Thiesenhusen, *Phillipine Land Reform Stymied*, CHRISTIAN SCIENCE MONITOR, Apr. 25, 1990, at 18 (discussing South Korea and Taiwan as celebrated newly industrialized countries due to effective land reforms).

51. See *World Bank, IMF Economic Reform Policies for Africa Fail, Says Adedji*, Xinhua General News Service, April 22, 1992 (LEXIS, Nexis Library, Current File) (stating that the economic policies of the World Bank and the IMF for Africa have failed because they are inappropriate).

52. See *id.* (asserting the inappropriateness of World Bank policies in Africa); see also *African Economies on Shaky Foundation*, Inter Press Service, April 22, 1992 (LEXIS, Nexis Library, Current File) (elaborating on the unsuitability of the structural adjustment programs of the World Bank and the IMF).

53. See *Roundup: Africa Seeks Cure for Spiritless Economy*, Xinhua General News Service, June 24, 1992 (LEXIS, Nexis Library, Current File) (criticizing western-prescribed remedies of the IMF and World Bank as unsuitable for African countries as such policies over-emphasize short-term balancing of external and internal finances at the expense of longer term development).

54. See *id.* (stating that the economic positions of the IMF and the World Bank adversely affect health, education, and social services of the average people in Africa).

55. See *id.* (asserting that opponents of the structural adjustment programs of the IMF and World Bank believe that the most egregious mistake of the programs was ignoring Africa's unique situation).

identified with respect to how loan funds were used.⁵⁶ Such projects included the building of roads, power projects, and the construction of schools and hospitals. Often, the MFAs combined commitments for administrative reforms of the enterprise executing the project or program, or reform of such project or program, with the loan.⁵⁷ One example of an administrative reform was a tariff structure which governed the revenue base of the enterprise to which the money was loaned, or which was the intended benefactor of the loan.

The World Bank and the IDB interpreted project lending in an elastic way, encompassing, not only physical construction, but "global loans," as well.⁵⁸ This latter type of lending typically involved a loan by the World Bank or the IDB to an intermediary financial institution which then loaned the resources to the final users, for example, small industrial or agricultural enterprises.⁵⁹ Global loans enabled the MFAs to reach smaller enterprises in the developing countries which they otherwise would not have been able to reach if the MFAs attempted to loan directly to such enterprises.⁶⁰

The World Bank introduced structural adjustment lending in 1980 in response to the acute balance of payments crisis in the late 1970s in many of its borrowing member countries.⁶¹ The legal basis for structural adjustment lending is the "special circumstances" exception pro-

56. See EDWARD S. MASON & ROBERT E. ASHER, *THE WORLD BANK SINCE BRETTON WOODS*, 229-259 (1973) (discussing the World Bank's commitment to "projects" and how project selection and project appraisals work). See also RICHARD E. FEINBERG, *BETWEEN TWO WORLDS: THE WORLD BANK'S NEXT DECADE* 6 (1986) (stating that before 1980, project lending was the traditional lending approach of the World Bank).

57. See Baum, *supra* note 4, at 211 (explaining that the World Bank is closely engaged in all cycles of lending, from the identification and preparation of projects on one side to appraisal and supervision on the other). This form of project lending was not, however, characteristic of the lending of the IMF. *Id.* The IMF was charged with monitoring loans, and providing assistance to correct a country's short term balance of payments disequilibrium, if required. *Id.* The funds it loaned, consequently, were not project or program-related like those of the World Bank. *Id.*

58. See Feinberg, *supra* note 56, at 5 (describing the World Bank coordinating global capital flows, and pulling together various lenders and investors in support of programs primarily in the more debt-ridden countries).

59. See MASON & ASHER, *supra* note 56, at 359 (stating that loans were processed through finance companies which were guaranteed by governments, and the finance companies channeled the funds to the targeted enterprise).

60. See MASON & ASHER, *supra* note 56, at 362 (describing the success of development finance companies cooperating with the World Bank in channeling investments and entrepreneurship into financially viable enterprises).

61. See SHIHATA, *CHANGING WORLD*, *supra* note 5, at 26-27 (describing the introduction of structural adjustment loans in 1980 when the World Bank realized that certain countries faced severe balance of payments deficits; and, as a result, economic reconstruction became a precondition for the sound financing of new investment).

vided in the World Bank's Articles of Agreement.⁶² Although Article III provides a clear preference for project lending, the term "special circumstances" is not defined in the Articles and, thus, emerged as a flexible concept over the years. As a result of the World Bank's reliance on this concept, the World Bank invaded the "jurisdiction" of the IMF, engaging the borrowing country in a macroeconomic dialogue, which in many cases duplicates the same dialogue as the IMF.

More importantly, structural adjustment lending led to a rough division of labor between the two institutions resulting in the IMF handling the macroeconomic negotiations whereas the World Bank engages in sector negotiations.⁶³ In the last few years, sector adjustment lending, which focuses on sectorial investment programs, policies, and institutions as an essential factor of supply response, emerged as the dominant adjustment lending practice.⁶⁴ Sectorial lending reflects the World Bank's view that the policy environment is at least as important as creating the physical and institutional framework for growth and development.⁶⁵

The distinguishing characteristic of sector adjustment lending is that the disbursement of loan funds are tied to policy commitments of the borrower, rather than to a specific construction schedule of physical works or applications for funding by industrial or agricultural enterprises.⁶⁶ The loan funds are disbursed in "tranches," the first usually distributed upon signature of the loan agreement and fulfillment of legal conditions precedent.⁶⁷ The remaining loan funds are then disbursed in subsequent tranches after a review, or reviews depending upon how many tranches are involved, to determine whether the bor-

62. World Bank Memorandum, *supra* note 17, at 11.

63. See Stephen A. Silard, *The Role of the International Monetary Fund*, 32 AM. U. L. REV. 89, 100-102 (1982) (discussing the relationship between the IMF and the World Bank). The IMF monitors exchange arrangements, and supports a comprehensive economic policy framework. *Id.* For the World Bank, project lending is still an integral part of its operations. *Id.*

64. World Bank Memorandum, *supra* note 17, at 8. See Gerald K. Hellziner, *Policy-Based Program Lending: A Look at the Bank's New Role*, in BETWEEN TWO WORLDS: THE WORLD BANK'S NEXT DECADE, 47, 49-52 (Richard E. Feinberg & contributors eds., 1986) (describing how sector adjustment loans have become more important in the last two years). The distinction between structural adjustment loans and sector adjustment loans is also delineated. *Id.*

65. World Bank Memorandum, *supra* note 17, at 8.

66. See Silard, *supra* note 63, at 84-88 (explaining that the members' policies must be satisfactory such that the members deserve the Funds support and may receive IMF Funds).

67. See Silard, *supra* note 63, at 84-98 (elaborating on how the IMF makes its resources available to members under a process called the "stand-by" arrangement). The stand-by arrangement provides that the Fund's decisions are contingent on the members' policies. *Id.*

rower fulfilled the commitments made initially in order to obtain the loan.⁶⁸

Sector lending presents a great advantage from the borrower's viewpoint. The disbursed funds may be used for virtually any purpose, exclusive of the designated prohibited purposes. For example, a finance minister who receives a sector loan enjoys great discretion using the loan funds, in contrast to a project loan, which is restricted to the project or program for which it was borrowed. The borrower obtains an immediate disbursement upon signature of the loan contract and, in subsequent tranches, upon complying with the policy commitments agreed upon as a condition of the loan.⁶⁹ Yet, the borrower must repay the sector loan on a more accelerated schedule than a conventional project loan, because such loans are disbursed much more rapidly than project loans, which results in a shorter period of time for repayment of the loan.⁷⁰

Under this system, it is impossible to determine whether the borrower is complying with its policy commitments in order to obtain the loan, or if the borrower would have effected policy reforms absent the loan. As a result, the country is, in effect, receiving a reward for doing that which it ought to have done and what it probably would have done in its own best interest without receiving the loan. If this is the case, then the borrower has not added to its productive capacity. If this is not the case, and the borrower was induced to undertake the policy reforms by the temptation of external financing, rather than by conviction, the reforms probably will not last very long.

The Agreement establishing the IDB limits the IDB to "principally" financing projects.⁷¹ Unlike other MFAs, the borrowing member countries of the IDB own a majority of the share of capital in the Institution itself.⁷² By voting together, a limited group of the members, which are shareholders in the Institution, could theoretically approve loans and technical assistance operations without the consent of the other shareholders. The IDB, however, operates on the basis of consensus,⁷³

68. Silard, *supra* note 63, at 95. The purchase in installments is subject to performance criteria that may include review clauses on specific policies. *Id.*

69. INTER-AMERICAN DEVELOPMENT BANK, 1990 ANNUAL REPORT 15 (1991) [hereinafter 1990 IDB Report] (explaining that sector lending permits the IDB to provide quick disbursement of loans to offset the adverse affects which often follow policy reform). These loans may be used to finance imports. *Id.*

70. *Id.*

71. Agreement Establishing the Inter-American Development Bank, Apr. 8, 1959, 10 U.S.T. 3029, 389 U.N.T.S. 69, art. II, § 7 (a) (vi) [hereinafter IDB Agreement].

72. *Id.*, art. II, § 3 (a).

73. *Id.*, art. IV, § 9 (stating that all the decisions in the IDB's Fund requires a two-thirds majority).

and, as a result, controversial questions are postponed until agreement is reached among the members. The United States and one other country with a designated percentage of the voting power of the share ownership could effectively delay consideration of an operation⁷⁴ by the Board of Executive Directors of the IDB (which must approve all loan or technical assistance proposals for financing) for up to one year.

The replenishment negotiations at Amsterdam yielded a compromise resulting in the Replenishment Agreement.⁷⁵ The Replenishment Agreement allows the IDB to engage in sector lending⁷⁶ and, thus, launched the IDB into the policy reform game which is central to the Bretton Woods Institutions. Previously, the IDB concentrated upon project lending, although sector conditions were often considered part of the conditions attached to a particular project loan proposal. The IDB traditionally considered policy reform best left to the political process within an individual country. The following example illustrates the difference between the two loan approaches in considering an electric power loan. The IDB discusses the tariff policies applied in the sector with the country authorities to assure that the enterprises are financed with sufficient revenues to carry out the investment program in the sector. The decision, however, whether the sector should be largely privately- or publicly-owned, falls within the realm of political decisions and, as such, should be left to the country to decide.

By authorizing the IDB to engage in sector lending, the Board of Governors, the governing authority of the IDB,⁷⁷ in essence, authorizes

74. *Latin Americans Call for Early Implementation of Brady Debt Plan*, UPI, Mar. 21, 1989, available in LEXIS, Nexis Library, UPI File (noting that because the United States provides seventy percent (70%) of the IDB's subsidies and has a thirty-four and five-tenths percent (34.5%) voting share, the United States sought veto power on the loans). The United States, however, settled on the ability to delay loan approval commitments. *Id.*

75. *Inter-American Development Bank Replenishment: Hearing Before the Subcomm. on Int'l Econ. Pol'y, Oceans & Env't of the Senate Comm. on Foreign Relations*, 101st Cong., 1st Sess. 2 (1989) [hereinafter IDB Replenishment Hearings] (statement of David C. Milford). The IDB in the negotiation of the seventh replenishment of its resources, was given the authority to engage in sector lending. *Id.*

The agreement on a seventh replenishment of the IDB's resources was reached at Amsterdam in 1989 after three years of often bitter negotiations between the Latin American countries and the United States Treasury. *Id.* The major issue revolved around the United States Treasury's demand for an effective veto by the United States and Canada over the operations of the IDB. *Id.*

76. See *id.* at 7 (observing that sector lending is new to the IDB, and that it is provided that the first two years of lending is cofinanced with the World Bank).

77. IDB Agreement, art. VIII, § 2. The IDB operates on a four-year funding cycle. A lending program and the necessary capital increase required to sustain the lending gain approval from the Board of Governors of the Institution. *Id.* The Board of Governors is the highest governing body of the IDB. *Id.* Governors are usually Ministers of

the IDB to enter into a more far-reaching dialogue with borrowing countries over the shape of their economy.⁷⁸ Sector lending is limited to a maximum of twenty-five percent (25%) of the US 22.5 billion dollars lending program approved for the four-year period of the Replenishment.⁷⁹ The IDB has attempted to design sector adjustment loans so that they have an investment component, as well as a fast disbursing aspect linked only to policy reform commitments.

In 1990, the IDB approved six sector loans to five countries totaling US 1.3 billion dollars.⁸⁰ This constituted thirty-five percent (35%) of the lending for the year.⁸¹ As a result of sector lending, the IDB was in a position to assist in the improvement of financial and economic reforms in the public sector; to support efforts by the countries involved to privatize state-owned enterprises; and to promote private sector involvement in the economy.⁸² Precisely how the Bank must accomplish these ends is difficult to ascertain from the public documentation. The 1990 Annual Report, which is much more informative than previous reports, observes that the World Bank approved its adjustment loan to help Mexico finance policy reform in telecommunications and transportation.⁸³ In part, the loan is to assist in the privatization of TELMEX, the Mexican telecommunication company, and to develop a regulatory system for its promotion and administration. The IDB also provides funds aimed at making the trucking industry more competitive, and able to meet the particular needs of long distance freight hauling, the principal means by which goods are transported in Mexico.⁸⁴

The World Bank approved two sector loans for Venezuela. One loan was for modernizing the financial sector reforms.⁸⁵ The other loan was

Finance or Economy, or Presidents of Central Banks of the countries which are the shareholders of the IDB. The Board of Governors meets annually and must formally approve the financial statements of the Institution. *Id.* Only the Board of Directors can approve an increase in the share of capital which is necessary to sustain a lending program. *Id.*

78. 1990 IDB Report, *supra* note 69, at 15. The 1990 Annual Report explains that sector lending assists borrowers in their efforts to focus on the institutional, sector, and the macroeconomic aspects of the operations which inhibit the efficient use of resources at the project level. *Id.* The IDB uses sector loans in order to engage the borrower in dialogues to address and overcome the principle economic, financial, and institutional hindrances to development. *Id.*

79. IDB Replenishment Hearings, *supra* note 75, at 4.

80. 1990 IDB Report, *supra* note 69, at 15.

81. 1990 IDB Report, *supra* note 69, at 15.

82. 1990 IDB Report, *supra* note 69, at 11.

83. 1990 IDB Report, *supra* note 69, at 15.

84. 1990 IDB Report, *supra* note 69, at 15.

85. 1990 IDB Report, *supra* note 69, at 109-10.

for public enterprise reforms.⁸⁶ The financial sector loans included policy actions such as: improving credit allocation, reducing the public sector's role in financial institutions, and establishing a stronger regulatory framework to better supervise private banks.⁸⁷ The public enterprise loan established an innovative program privatizing many public corporations, and establishing stricter operating rules for institutions remaining in the public sector.⁸⁸

The World Bank also approved two sector adjustment loans to help approve agricultural sector reforms in Honduras and Jamaica. The Honduras loan emphasized reform to the general policy environment, especially with respect to international trade.⁸⁹ The Jamaica loan emphasized agricultural pricing policies, agricultural credits, including interest rate policy; domestic marketing of commodities; privatization of publicly-owned lands; and chemical pesticides control.⁹⁰

Sector loans are clearly focused on policy reform. The Annual Report, however, scarcely addresses the use of the loan funds, including: whether the funds are used directly for investment purposes; whether the funds disbursed are used for general imports unrelated to the sector in which the reforms are to be carried out; or, whether it is possible to tell precisely what commitments the particular government, or its executing entities (such as, TELMEX, the financial institutions in Venezuela, and the agricultural institutions in Honduras and in Jamaica), gave as a condition to first and second tranches of disbursement of the loan funds. For example, it is not evident from the Annual Report that the agricultural sector loan in Jamaica was delayed for a substantial period of time because of a bitter dispute with authorities of the Jamaican government over the speed at which interest rates were to be raised for farmers with small holdings.⁹¹ Another example which is not evident in the Annual Report involves Honduras. A principal issue in

86. 1990 IDB Report, *supra* note 69, at 110-11.

87. 1990 IDB Report, *supra* note 69, at 109-10.

88. 1990 IDB Report, *supra* note 69, at 109-10.

89. 1990 IDB Report, *supra* note 69, at 86-88.

90. 1990 IDB Report, *supra* note 69, at 89-91.

91. See *Jamaica: Caribbean Support in Flight Against Interest Rate Hike*, Kingston, INTER-AMERICAN PRESS SERVICE, June 8, 1990 (reporting on the dissatisfaction of farmers concerning conversion to a market driven interest rate). In Jamaica, fixed interest rates were replaced by a market driven system of interest rates. 1990 IDB Report, *supra* note 69, at 90.

It is an article of faith in the MFAs that interest should not be subsidized for any segment of the population and should be in excess of the rate of inflation in the country, *i.e.*, the borrowers should be charged a "real" rate of interest.

Honduras was the revision of the agrarian reform law to permit the sale and transfer of title to agrarian reform properties.⁹²

Both issues involved major questions of social policy for the borrowing countries. The social policy in the case of Jamaica was the promotion of family-size holdings, both as a means of slowing down migration to the large urban center of Kingston, and as a means of promoting domestic food production.⁹³ The social policy in the case of Honduras was the limitation on sale property obtained as a result of an agrarian reform proceeding in order to prevent the concentration of agricultural holdings in a few large entities.⁹⁴

In both cases, economic efficiencies were possibly sacrificed for the purpose of achieving social stability in rural areas. Who, however, decides the proper balance among these considerations? Further, should it be the MFAs or the government concerned? As a corollary, would the United States have created a rural life with all the amenities which are taken for granted in the United States without subsidized credit for rural electrification and, as in the American West, subsidized water rates?

Reasonable people differ over the proper mix of the various policies. There is, however, no way of knowing from public documentation whether the MFAs have been "reasonable" in the negotiations. In all four cases presented herein, the IDB sector loans were made in conjunction with the World Bank. It may not be coincidental that the most contentious issues appear to have arisen in the context of negotiations with small countries whereas in the case of the large countries, such as Mexico and Venezuela, the sector loans appear to be more designed to reward past performance. Apparently, the MFAs have more "leverage" with the smaller countries.

V. THE POLITICAL QUESTION

The Articles of Agreement of the IBRD explicitly prohibit the World Bank and its officers from taking into account the "political character" of the member or members during the decision-making pro-

92. *Honduras; Politics & Economy, Callejas draws on Solid Experience; 'Tailor-Made' Cabinet of Businessmen and Technocrats*, LATIN AMERICA REGIONAL REPORTS, Feb. 22, 1990, at 6; Juan Ramon Duran, *Peasants Seize State Offices to Demand Agrarian Reform*, INTER PRESS SERVICE, July 28, 1986.

93. *Id.*

94. *Id.*

cess.⁹⁵ The IBRD must also ensure that the proceeds of any loan are used "for [the] purposes for which the loan was granted, with due attention to considerations of economy and efficiency and without regard to political or other noneconomic influences or considerations."⁹⁶ The IBRD is clearly and unequivocally prohibited from making or denying loans based upon the political complexion of the borrowing member country.

The Articles of the IBRD go still further. On the face of the Articles, "noneconomical factors" are prohibited from being taken into account in, for example, determining a lending program in a particular country.⁹⁷ Read literally, the IBRD cannot, in conformance with its own Articles of Agreement, assess a country's "performance" in terms of its human rights record. No matter how atrocious that record may be, it is irrelevant to the decisions of the IBRD pursuant to its own charter provisions.

The IDB Charter is similar to the Articles of Foundation of the IBRD. It provides that: "[t]he Bank, its officers and employees shall not interfere in the political affairs of any member, nor shall they be influenced in their decisions by the political character of the member or members concerned. Only economic considerations shall be relevant to their decisions."⁹⁸

These explicit prohibitions should not be taken too seriously with respect to the actions of the United States Government. The United States Government respects these provisions of the governing documents of both institutions on a highly sensitive basis. Instances in which a government's economic policies conformed to the prevailing economic orthodoxy, for example, in the case of Chile under the leadership of Pinochet and South Korea under its military dictatorship, Charter provisions of the IDB prohibiting political considerations were invoked as the justification for the United States Executive Director voting in favor of loans for these two (not to mention other similar type) governments.⁹⁹ However, in other instances in which a government has been politically obnoxious to the United States Government,

95. *Articles of Agreement International Bank for Reconstruction and Development*, art. IV, § 10, 60 Stat. 1440, T.I.A.S. No. 1502, 2 U.N.T.S. 134 (1945) [hereinafter IBRD Agreement].

96. *Id.*, art. III, § 5(b).

97. Barry E. Carter, *International Economic Sanctions: Improving the Haphazard U.S. Legal Regime*, 75 CALIF. L. REV. 1162, 1218 n.231 (1987).

98. IDB Agreement, *supra* note 71, art. III, § 5(f).

99. *Ignored Again: Human Rights in Chile*, *N.Y. Times*, Nov. 24, 1986, § A, at 18. *But see* International Financial Institutions Act, § 701 (requiring the United States to oppose loans to countries that abuse human rights).

as in the case of the Allende Government in Chile in the early 1970s and the Sandinista Regime in Nicaragua,¹⁰⁰ United States Government officials made it clear that continued lending to these governments would have dire consequences for the lending institutions.

In the IDB, the United States is the largest single shareholder.¹⁰¹ No increase in resources is possible without the participation of the United States. Not surprisingly, the IDB has conformed its lending program to this political injunction. The injunction is communicated confidentially at a high level. The basis for denying a loan is never acknowledged as a result of the disapproval of the United States Government for the potential borrowing country. "Economic" considerations are invariably cited for the denial of a loan; yet within the organization, it is understood by virtually all that the country in question is being cast into convery for purely political reasons, in flagrant violation of the Charter of the IDB.

The conspiracy of silence is maintained by all concerned. The highest ranking officials think they have no alternative except to conform to the desires of the United States so as not to jeopardize the viability of the Institution, itself. The other borrowing countries fear losing access to one of the few sources of long-term capital for development purposes. Often politically conservative themselves, the officials are not enthusiastic about supporting a "leftist" regime (like the Allende Government in Chile) or a "revolutionary" regime (as in Nicaragua), with influences which might elicit similar movements in their own countries. Also instances involving non-borrowing countries, at least with respect to Latin America, result in a strong tendency to defer to the "national security" interests of the United States.

Hence, the sanctity of the Charters of the MFAs is, as far as the United States and the Institutions are concerned—"a sometime thing." It is also true, however, that it would be anomalous for the MFAs to advise a country that its "performance" does not justify a major lending program because of consistent and horrendous violations (for example, in the cases of Guatemala and El Salvador) of the rule of law, understood as the abuse of the human person, when, in doing so, the MFAs would be violating their own "law," through violation of their own governing documents.

In order to avoid this anomaly, the World Bank has attempted to develop a concept of "governance." This concept seeks to encourage the development and use of effective executing programs as necessary com-

100. *Ignored Again*, *supra* note 99, at 18.

101. *End of an Era*, *supra* note 19, at 1.

ponents of economic development plans.¹⁰² Corruption, however, is an impediment to the effective execution of an agreed upon economic program and it is, therefore, a legitimate criterion for evaluating a country's "economic performance."

The IBRD has extended the dialogue with the borrowing country beyond the traditional macroeconomic issues with which it has traditionally dealt. There are, however, definite limitations on how far "governance" can take the IBRD in its dialogue with the borrowing country and in its internal deliberations with respect to whether a lending program is warranted. The application of the rule of law must be shown to have some relevance to the efficiency of the economy. In order to reduce the costs of economic transactions, for example, the IBRD provides assistance with modernizing and increasing the efficiency of the borrowing country's judicial system. Similarly, the IBRD suggests improved methods of enforcing laws that have a clear relation to economic development, such as methods of tax collection. The IBRD might also recommend changes to current laws, such as those governing financial institutions, in order to permit foreclosures on debt and mortgages, for example.¹⁰³ Faithful to the terms of the Articles of Agreement, the Bank has explicitly rejected taking into account "political" or "human rights" concerns in assessing the eligibility of a country for a major lending program with the Bank.¹⁰⁴

This legally correct view is increasingly at variance with the consensus which is apparently developing within the international community. That consensus has found an institutional expression in the European Bank for Reconstruction and Development (EBRD). The Preamble to the Charter of the EBRD commits the Bank to act in accordance with the "fundamental principles of multiparty democracy, the rule of law,

102. See Governance Paper, *supra* note 23, at 13 (discussing the role of the IBRD in "governing" the implementation of development programs by "creating and sustaining an enabling environment for development"). This paper was originally designated "For Official Use Only." The author has chosen to ignore this limitation; one of the more unfortunate aspects of the MFAs is the tendency to limit public discussion of controversial issues which directly affect their operations. The author believes that a government which submits information it considers confidential to an MFA as part of the negotiation of a loan proposal or assessment of economic performance is entitled to have that confidentiality respected. But the attempt to limit public consideration of a general issue such as governance, which affects no specific operation or government confidentiality, should not be entitled to the same presumption.

103. Governance Paper, *supra* note 23, at 13.

104. See World Bank Memorandum, *supra* note 3, at 35-36 (stating that the practice of the IBRD to date has been not to consider the degree of respect afforded to political, as opposed to economic, rights by a government as a factor in the decision to make or not to make loans to that government).

respect for human rights and market economics."¹⁰⁵ This commitment is made even more explicit in Articles 1 and 2, which delineate the purposes and functions of the Institution.¹⁰⁶ The EBRD Charter is a radical departure from the neutral stance taken on political and human rights issues in the Charters of the IBRD and the IDB.¹⁰⁷

Why should there be a different standard for the non-borrowing countries of the IBRD and the IDB than there is for borrowing countries of Eastern Europe and the countries of the former Soviet Union? Every country in Latin America, with the exception of Haiti and Cuba, now nominally adheres to a commitment to multiparty democracy and human rights. Therefore, it is currently an opportune time to consecrate this commitment by amending the Charters of these Institutions along the same lines as the Charter of the EBRD. Not taking such action implies doubts as to the durability of the commitment to multiparty democracy and human rights in the region. There is no conceivable reason why this commitment to multiparty democracy and human rights is only applicable to Eastern Europe and Latin America.

It is true that amending the Charters of the MFAs may open the door to other amendments, particularly with respect to the shareholdings of the member states and their respective voting power. This could lead to a realignment of power in these Institutions; and this would not necessarily be a bad thing. A realignment of voting shares to reflect the reality of the redistribution of economic power in the world, from that prevailing when the Charters of these Institutions were originally drafted and approved, is long overdue.

It is true that the concepts of multiparty political democracy and human rights are not, in practice, self-evident. Guatemala, for example, has multiparty elections; yet it also has one of the most brutal military establishments in the world, which is not susceptible to civilian control.¹⁰⁸ The military is historically aligned with important sectors of the

105. Agreement Establishing the European Bank for Reconstruction and Development, May 29, 1990, Preamble, 29 I.L.M. 1077, 1083 (1990) [hereinafter EBRD Agreement].

106. *Id.* arts. 1 & 2, 29 I.L.M. at 1084.

107. See *supra* notes 72-74 and accompanying text (discussing the purposes and functions of both the IBRD and the IDB).

108. See Richard L. Millet, *Limited Hopes and Fears in Guatemala*, CURRENT HISTORY, Mar. 1991, at 125 (noting that twenty political parties and eleven presidential candidates took part in the most recent election in Guatemala); see also *Yes, General, After You, General*, THE ECONOMIST, Jan. 12-18, 1991, at 37-38 (explaining that the popularly elected president is really subordinate to the military and acknowledging the human rights atrocities that occur in Guatemala due to a lack of control over the armed forces); *Where the War Still Looks Cold*, THE ECONOMIST, Feb. 8-14, 1992, at

property and commercial establishments.¹⁰⁹ The issue, therefore, is whether multiparty democracy is truly meaningful in Guatemala in the face of the military's systemic abuse of human rights? In an instance in which economic inequity is so deeply entrenched, does multiparty political democracy become like a mantra substituted for action to change for the better the condition of life of the great majorities in Guatemalan society?

Similar issues and questions can be raised and are relevant with respect to the dominance of the PRI in Mexico,¹¹⁰ as well as the continued near feudal conditions which exist in parts of Northeast Brazil.¹¹¹ The commitment to multiparty political democracy and human rights is, consequently, no panacea for the deep social and economic divisions which characterize so much of Latin American society. Paradoxically, the elimination of such chasms in the formerly communist states of Eastern Europe may have made the achievement of multiparty political democracy in these countries more feasible than in many parts of Latin America, provided, of course, that those countries can overcome the corrosive effects of "murderous" nationalism which emerged in the aftermath of the fall of the communist regimes that had governed in Eastern Europe.

The primacy of such issues and questions is the "Achilles heel" of the Latin American democracies. In spite of the above caveats, it remains true that making explicit the commitments to political multiparty democracy, human rights, and social equity in the definition of "country performance" could force a more balanced approach than now exists within the MFAs with respect to who has access to the resources of these Institutions.

Under such an enlarged concept, neither Chile under the leadership of General Pinochet nor South Korea under the military dictatorship, could have been considered the "stars" of the system. There might be a less uncritical approach to the Mexican "performance," and Guate-

37 (reasserting that although the 1990 elections mark the longest period of civilian rule in Guatemala since 1954, the military is really in control of the country).

109. See Millet, *supra* note 108, at 128 (noting the support of certain right-wing, private sector interests for the military leadership).

110. AMNESTY INTERNATIONAL, USA, REPORT 1992: A COMPREHENSIVE REPORT ON HUMAN RIGHTS VIOLATIONS AROUND THE WORLD 186-88 (1992) (establishing the long term political success of the PRI in Mexico, but also acknowledging the widespread occurrence of serious human rights violations by agents of the government).

111. See, e.g., *id.* at 71-72 (detailing the oppressive conditions suffered by peasants and peasant rights' activists in northeastern Brazil and the lack of governmental response to the numerous human rights violations that have occurred in those areas).

mala might not qualify for assistance without fundamental reforms in the military and land tenure in the rural areas.

VI. SOME OBSERVATIONS ON "ACCOUNTABILITY"

It is not true, as some have alleged, that the MFAs are accountable to no one except themselves. There is a highly structured hierarchy of accountability. The staff is accountable to the Board of Executive Directors of the Institutions.¹¹² The Executive Directors are accountable, as is the staff, to the Governors who are the political level of decision making for the MFAs.¹¹³ The Governors are accountable to the United States Congress and the Parliaments, which must ultimately approve an increase in resources for the MFAs.¹¹⁴

There are important limits to this structure of accountability. The staff, the Directors and the Governors are largely drawn from similar backgrounds of economics and finance. The concept of development within the organizations is a highly constricted one. It has evolved somewhat to finally recognize the urgency as a social dimension to a short term structural adjustment program. But "country performance," which is the precondition for a major lending program remains largely a dialogue on the traditional macroeconomic conditions, now enlarged to encompass privatization of state-owned enterprises and market liberalization, particularly financial market reform.

The subject matter of the negotiations is largely impenetrable to those outside of the Institutions and to the United States Treasury and its counterparts in other non-borrowing countries. To a significant ex-

112. See, e.g., IDB Agreement, *supra* note 71, art. VIII, § 5 (outlining the responsibilities of the president, vice-president(s) and staff of the IDB, all of whom report to the Board of Executive Director(s); IBRD Agreement, *supra* note 3, art. V, § 5 (stating the authority of the Board of Executive Directors over the president, vice-president(s) and general staff of the World Bank).

113. See, e.g., IDB Agreement, *supra* note 71, art. VIII, § 2(a)-(c) (providing the Board of Governors with the authority over the Board of Executive Directors, to whom the Governors may delegate certain powers of the IDB); IBRD Agreement, *supra* note 3, art. V, § 2(a) (creating the Board of Governors as the ultimate authority over the operations of the World Bank).

114. See Ibrahim Shihata, *The World Bank and Human Rights: An Analysis of the Legal Issues and the Record of Achievements*, 17 DENV. J. INT'L L. & POL'Y 39, 45-47 (1988) (admitting that although officials of the World Bank are charged with serving the interests of the World Bank first and foremost, in certain situations, the World Bank officers are able to vote the political will of the countries they represent); see Shihata, *Changing World*, *supra* note 5, at 14 (recognizing that the future successes of the World Bank depend upon the support it receives from its member countries); see also IDB Agreement, *supra* note 71, art. IX, § 1 (asserting the rights of the member countries to withdraw support from the IDB); IBRD Agreement, *supra* note 3, art VI, § 1 (allowing member countries to withdraw from the World Bank).

tent, it must remain this way. A sector adjustment loan or the IMF Extended Fund Facility cannot be negotiated in a "fishbowl." The subject matter and the data are too sensitive for the negotiating government. The people affected are usually too amorphous a group, making it difficult for a whole society or a sector of society (*e. g.*, the agricultural sector), to be organized to express an homogenous point of view.

That is why a specific project which affects a defined population or area, particularly where physical structures are identifiable (as with a dam or a road), is much more susceptible to being evaluated by people and institutions such as NGOs which have an interest in the area affected by the proposed project. The issue of "accountability" now seems, to a very significant extent, to revolve around projects and programs that affect the physical environment. NGOs in the non-borrowing countries can make common cause with counterparts, however fledgling, in the borrowing country and population directly impacted.

In the end, the MFAs must be accountable for their programs to their political "paymasters", specifically the United States Congress and the Parliaments. It is only these governmental institutions which can finally approve an amendment of the Charters to incorporate the political and social values which are rightly expressed through a country's political system. As long as the legislative authority is satisfied with the limited approach to development reflected in the current practices in the MFAs, that constricted approach will continue to prevail.

United States legislation already reflects a mandate that the "voice and vote" in the MFAs of the respective United States Executive Directors must oppose loans to countries which are guilty of consistent and gross human rights violations.¹¹⁵ But this legislation is a unilateral expression by the United States Congress. It does not become institutionalized as part of the culture of the Institution. Indeed, within the present constraints of the Charters of these Institutions, with the exception of the EBRD, it cannot find an institutional expression.

The business of the MFAs has never been economic development; it is and always has been the political economy of development. The MFAs have never had to confront the full implications of their actions within a society. They could, for example, disclaim any responsibility for the human rights abuses of the Pinochet government, although the continued lending by these Institutions gave that government a patina of respectability behind the facade of "outstanding" economic performance.

115. International Financial Institutions Act of 1977, § 701, 22 U.S.C. 262(d) (1990).

It is therefore right and proper that the values which ought to be reflected in the operations of these Institutions should be incorporated in an amendment to the Charters of these Institutions, actions which require the explicit approval of Congress and Parliaments, the ultimate expression of political accountability.