

# **The Theory of Governance & Accountability**

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## ***A. Introduction***

International organizations have changed significantly over the decades. Since their inception, they have increased the breadth and depth of their policies and programs, which have come to affect a greater range of individuals, communities, and governments. As a result, issues pertaining to governance and accountability at international organizations rose to prominence. Given their growing influence on international relations, international organizations must address these issues to operate successfully and effectively.

Over the past decade, many commentators have consistently criticized the governance of international organizations. The main criticism of governance centers on accountability, or more accurately, a lack of accountability. At the most basic level, accountability describes the relationship between an international organization and its members, focusing on the means available to member countries (1) to determine whether an international organization is in compliance with its charter and (2) to voice their interests. This paper presents the general theories of governance and accountability and highlights their application to the international financial institutions (IFIs). This paper does not purport to make any judgments on which theories should be adopted by international organizations today; rather, it serves as an inventory of the conventional theories of governance and accountability. This baseline will provide a foundation for the more in-depth analyses on the particular issues of governance and accountability at the International Monetary Fund (IMF), the World Bank, and the four Regional Developmental Banks.

This paper divides into two main sections. The first section outlines the different theories and uses of governance, the role of democracy in governance, and good governance strategies, as applied to international organizations. The second section discusses accountability at international organizations, and IFIs in particular, by examining its basic forms and the debates

on the immunity of these organizations and the role that human rights should play in holding these organizations accountable for their actions.

## ***B. Governance***

Governance is vital to the success of any organization—from small domestic organizations to large international organizations. But what exactly is governance? In its simplest form, governance refers to group decision-making that addresses shared problems. Within the context of international organizations, governance describes the processes and institutions that guide and restrain the collective activities taken by an international organization and its members. In addition, governance is more about the process through which a decision is made, rather than the substance of the decision itself. In other words, governance is not necessarily about making an international organization stronger; rather, governance describes an international organization's rules and procedures that the organization uses to fulfill its goals. Whatever ends an international organization may decide to pursue, governance describes the mechanisms through which the organization implements its policies.

Contemporary theories on governance make a fundamental distinction between governance and government. While both concepts involve intentional behavior on the part of an organization and its members to achieve certain goals (for example, an international organization creating a new human rights policy), governance is a broader concept than government. Governments have the formal authority to act; they also have powers to enforce compliance with their activities, rules, and policies. In particular, governments have, and exercise, police power. In contrast, the broader concept of governance describes the way in which an organization chooses to engage in certain activities backed by goals shared by its constituents. Often, these activities do not derive from legal or formal responsibilities of the organization. Unlike governments, international organizations do not possess police power to enforce compliance with their activities, rules, and policies. This is not to say that international organizations have no power to require compliance; their powers are different than those of national or local governments. For instance, the World Bank can suspend a loan to a borrowing country that has deviated from the terms of its loan agreement with the Bank. The various theories of governance all observe the difference between the concept of governance from government.

## **1. A Host of Theories and Definitions on Governance**

There is no simple answer to the question of what is governance. Instead, the theory and definitions of governance depends on the context. Despite their differences, the various theories on governance agree that social conflicts may be resolved not only by a sovereign (that is, a national) government, but also by international organizations composed of multiple sovereign governments and non-governmental actors. Besides, many of the theories summarized in this section relate to one another. In other words, the governance of international organizations may be explained by multiple theories at once. While certain theories of governance appear better suited to international organizations than others, all theories of governance are equally applicable to international organizations because they each provide a unique perspective. For instance, international organizations may benefit from borrowing concepts from corporate governance theory, even though few would think of corporate governance as being applicable to international organizations.

The purpose of the discussion on the various theories of governance is to present a variety of governance models that scholars and practitioners have used to describe the workings of international organizations. A non-exhaustive list of theoretical constructs and uses of governance addressed in this paper includes: (1) global governance; (2) subsidiarity; (3) the minimal state, (4) new public management, and (5) networks and systems outside government. The next section examines the controversial role of democratic theory in governance. The final section will discuss the concept of governance as it appears in the context of good governance.

### **a. Global Governance**

Global governance describes governance at the global level. The concept refers to international organizations that operate on a global scale, and describes the link between the activities of their members in a specific field of international relations—for example, an international monetary system for the IMF. The driving force behind this new theory of governance is the globalization of the international economy. Scholars disagree on the scope of global governance. While some only see global governance in the context of international finance, others also see its applicability in areas like the environment, international security, and human rights.

According to a leading scholar on global governance, the concept as it applies to international organizations has three characteristics: (1) a shared understanding of objectives and standards of conduct pertinent to the organization's specific subject, or goal, of governance; (2) agreed-upon rules that seek to give structure and substance to the organization's objectives; and (3) a regulatory structure to monitor and enforce compliance with the organization's rules, tend to their amendment, and resolve disputes arising from their interpretation. Typically, international organizations that work according to the theory of global governance will have a scientific approach to their operations. In other words, these organizations operate in part by gathering and analyzing empirical data from their members. In theory, good governance strategies may also show this scientific nature because the strategies are designed to increase the level and efficiency of governance. While global governance does not require formal structures like good governance, the best examples of organizations operating according to this type of governance are the IMF and the World Bank because they possess all three characteristics of global governance: they are large in terms of members and assets, and they have a scientific approach to their mission. For example, the IMF takes a scientific approach in its surveillance of the economies of its member countries because the IMF monitors the developments, events, and the overall change in conditions of the economies of its member countries to give sound policy advice on risks to each member's stability and growth.

### **b. Subsidiarity**

The theory of subsidiarity, or multi-level governance, focuses on the relationships between international organizations and their member states. This theory is based on the view that an international organization possesses certain powers traditionally exercised by the sovereign state, because its member countries surrendered these powers upon entering the particular organization. Because member states are giving some of their traditional sovereign powers to an international organization, they are considered to be making a leap of faith in joining the organization. Put differently, subsidiarity reflects a functional view of the governance of international organizations. Subsidiarity theory assumes that a member state may improve its domestic affairs by allowing the international organization to play a role in the formation of its domestic policies. Scholars believe this transplant of operational parts from the

state to the international organization, helps the state to strengthen its legitimacy, acceptability, efficiency, and effectiveness.

Subsidiarity consists of a vertical and a horizontal component. Vertical subsidiarity describes the process of delegating issues to the public actor at the lowest level capable of addressing the issue. Because vertical subsidiarity is not traditionally applied to international organizations, many believe vertical subsidiarity always involves pushing issues down to lower levels of authority. However, when the concept is applied to the relationship between an international organization and its member state, the international organization—an authority at a higher level than the state—is often the authority at the lowest level capable of addressing an issue. Thus, the concept describes a state's delegation of policymaking to actors located above and below it. For example, a state may lean on an international organization and the global rules and standards that it creates to enforce those rules and monitor the soundness of its economy. Scholars believe vertical subsidiarity is necessary because states are limited to creating policy within their own territory, and as a result, they cannot effectively create policies that may be of the greatest benefit of to them without relying on international organizations. For example, no state could effectively take on the IMF's standards and codes initiative, whereas the IMF is able to monitor individual countries' compliance with different international standards.

Horizontal subsidiarity addresses the idea of states delegating policymaking issues to non-state (that is, private) actors, such as businesses, labor groups, non-governmental organizations, consumer groups, foundations, and other interested parties. In comparison, vertical subsidiarity delegates policymaking to public actors. The groups that are engaged in policymaking with a given state are not limited in their powers by the territorial boundaries of the state. In addition, scholars believe that international organizations can create policy on an international level more effectively than a state acting alone because the former has better information and knowledge. Horizontal subsidiarity differs from self-organizing networks. For an example of horizontal subsidiary it is helpful to think of a modification to an example in the section on self-organizing networks. Self-organizing networks consist of private businesses adopting private standards and partnering together with other private firms to implement these standards on an international level through private agreements. If a state were to push private firms to create such standards, they would be the result of horizontal subsidiarity rather than self-

organizing networks. The key difference between the two concepts depends on whether the state or a non-state actor pushed for the private initiative in question.

### **c. Governance as the Minimal State**

The theory of governance as the minimal state refers to an organizational structure that arises when there is no government involvement. Applying this theory to international affairs would suggest that international affairs would be regulated without intervention from a formal actor, such as national governments or international organizations. Rather, governance would arise from the aggregation of individual decisions in the marketplace, and as a result, there will always be some sort of organic framework that governs the behavior of all actors within international relations. In the field of international economics, this theory would suggest that the field would be governed by an invisible structure even if the IMF and the World Bank were not to exist.

More often than not, this concept of the minimal state is brought up as rhetoric to demonstrate a preference for less government and fewer international organizations. In addition, some scholars like Rosenau, believe that governance differs from market interactions—that aggregating informal and uncoordinated individual decisions to create order does not amount to governance. This is because these scholars believe that individual actors within the markets lack the intentional or shared goals required for a governance arrangement. Thus, there is no group decision-making to address shared concerns in the concept of the minimal state. As a result, there is no governance according to many scholars.

### **d. The New Public Management Theory**

The new public management theory involves managing an organization—in our context, an international organization—by introducing private-sector management methods and incentive structures into the particular organization. Advocates of this theory believe that introducing private-sector methods and incentive structures into international organizations will increase the efficiency of these organizations. They derive their inspiration from market economics, rather than democratic theory. Applying the new public management theory to international organizations would require running the organizations like a private business. This involves two

aspects. First, international organizations may apply traditional private sector management techniques such as: (1) clear standards and measures of performance, (2) results-based management techniques, and (3), a focus on the bottom-line. Second, international organizations may adopt portions of the corporate governance theory that structures private businesses. In particular, international organizations could seek inspiration by looking at how Anglo-American corporate governance theory separates the roles of each participant in the corporation.

Corporate governance describes the system by which business associations are directed and controlled. The corporate governance structure specifies the distribution of rights and responsibilities among different participants in the corporation and describes the rules and procedures for making decisions on corporate affairs. In short, it provides the structure through which company objectives are set, and determines the means of attaining those objectives and monitoring performance. The participants in the corporation include the Board of Directors, managers of the corporation, shareholders, and other stakeholders. Corporate governance theory focuses on the shareholders, who own the corporation and select its Board of Directors. The Board of Directors has the responsibility of determining the corporation's strategies and it manages the daily business of the corporation through the corporate managers. The managers are limited in their action; in some cases, they must obtain approval from the Board of Directors to take action on behalf of the corporation.

Analyzing the structure of the IMF's Executive Board from the perspective of corporate governance theory demonstrates how the theory of new public management can be applied to international organizations. The IMF's Executive Board is comprised of Executive Directors who represent the Fund's member countries, much like a Board of Directors represents the shareholders in the typical corporation. Just as there can be majority shareholders that hold more voting power and greater control over the make-up of the Board in a corporation, there is a disparity in voting power amongst the member countries of the IMF which affects how decisions are made at that organization. Many critics lament this disparity and call for better balancing of votes between the developed country members and the developing country members. Despite their similarities, IMF governance and corporate governance differ in important ways. For instance, the IMF's "shareholders"—that is, its member countries—do not all hold the same

bottom line; in fact they can be viewed as holding opposing interests, represented respectively by the developed (lending) countries and the developing (borrowing) countries.

#### **e. Governance as Networks and Systems Outside Government**

Two related theories focus on the role of non-governmental actors in international organizations: (1) governance as a socio-cybernetic system, and (2) governance as self-organizing networks. To some extent these theories play off of the theory of governance as the minimal state. Governance as a socio-cybernetic system refers to informal and non-governmental methods of organizing actors that are accountable to a government in some manner. This model of governance does not require a sovereign authority, as it brings together numerous actors, from governments to non-governmental organizations to international organizations, all who could benefit from the synergy to solve shared problems and take more effective actions to address shared concerns. The socio-cybernetic system relies on the view that policymaking actors in a specific area of policy need each other because no single actor can effectively address those problems alone. For example, multiple international organizations could join together to create an environmental policy that would be more effective than if each organization did so on its own. Under this theory, governance arrangements arise from the interaction of various social-political groups and organizations.

The theory of governance as self-organizing networks goes further than governance as socio-cybernetic systems and refers to governance arrangements that develop from coordination among all the actors in a network that are not accountable to a government body. As a result, international organizations under this theory have a degree of autonomy that actors in a socio-cybernetic system do not have. Similar to governance as socio-cybernetic systems, the theory of self-organizing networks is becoming more relevant as governments encounter the difficulties of acting on an international stage. Scholars describe four characteristics of socio-cybernetic and self-organizing networks that distinguish them from the concept of government, as well as from other theories of governance: (1) interdependence between organizations and non-state actors; (2) continuing interactions between members of international organizations based on their need to share resources and discuss shared goals; (3) game-like interactions, based on trust and the

rules of international organizations; and, (4) in the case of the self-organizing networks theory, autonomy from the state.

One example of self-organizing networks lies in private contracting on a global scale. If governance is described in the broad sense—that is, they refer to group-decision making that is designed to address shared problems—collective standards developed by private actors constitute a form of governance. Private firms adopt standards, and then partner together with other private firms to create and implement the standards through private agreements. For example, Wal-Mart's adoption of the MSC standards for wild-caught fish and Home Depot's FSC standards for lumber both demonstrate standards initiated and implemented by private firms. There are no government actors involved in these situations, and neither Wal-Mart or Home Depot accountable to the government for these standards. Some scholars do not view private contracting as a form of governance arrangement because some private international standards are created unilaterally and thus lack the collective aspect required of governance arrangements. Should private contracting on the global level be considered a legitimate form of governance, non-governmental groups concerned about the environment or human rights, for example, should focus on developing standards through private entities rather than through national governments.

## **2. The Role of Democratic Theory in Governance**

Democratic theory greatly influences the debate on governance issues concerning international organizations. However, scholars disagree as to the extent of the impact of democratic theory on the governance of international organizations. Those who apply the democratic theory within this context see a democratic deficit within international organizations. Democratic deficit refers to a lack of well-developed democratic structures and institutions within a given international organization. There are numerous views on what makes a structure or institution democratic. Scholars commonly organize the divergent views on democracy into four flavors: libertarian, pluralist, social, and deliberative. The libertarian view posits that a democratic political order allows for the protection of individual liberties against the potentially corrupt and tyrannical power of the state. The pluralist view sees democracy as providing direct and formal accountability of government actors through the electoral process. The social democratic view focuses on the power that political institutions have to balance against the

power of wealth that is concentrated in capitalist economies. Finally, the deliberative view of democracy sees political institutions as a way to improve the political capacity of citizens through opportunities for meaningful and effective participation. Pervasive in most of these definitions of democracy is a focus on direct electoral or group accountability. Despite their differences, scholars from these four different theoretical backgrounds all severely criticize international organizations. For example, a pluralist would not be happy with the democratic structures in any international organization where members cannot exercise direct control over key decisions of the international organization.

Those who do not believe international organizations require democratic structures at all argue that the preference for democracy comes from Western countries that created these organizations in the first place. This group of critics argues that international organizations should not be understood through the lens of democracy because these organizations are fundamentally different from national governments. As noted earlier, this differences lie in the distinction between governance and government, and consequently, different standards and theories should apply to international organizations. Under this view, international organizations may operate without the legitimacy supposedly conferred by the existence of democratic mechanisms within it. The next section provides a list of the commonly proposed means to create better governance within international organizations. While many refer to these as good governance strategies, they may also allow an international organization to root its legitimacy outside of the traditional democratic theory.

### **3. Good Governance Strategies**

Good governance strategies refer to measures that are designed to improve the overall governance of an organization by increasing its effectiveness and legitimacy. In the case of international organizations, good governance is not about increasing the power of these organizations; rather, good governance advocates establishing a solid foundation for rules and procedures, which will help international organizations fulfill their individual goals. Whatever role an international organization envisions for itself, that organization can increase its effectiveness by implementing good governance strategies. Just as there are many different theories on how to understand the governance arrangements of international organizations, there

are many different approaches to good governance, which include: (1) democratic strategies, (2) results-based strategies, (3) order-derived strategies, (4) systemic strategies, and (5) procedural strategies. As noted above, this paper does not make a judgment as to which good governance strategy is the best for all international organizations; instead, it describes how each strategy may assist international organizations in improving its governance structure. Different variations of good governance strategies are not mutually exclusive; most of them may be adopted by international organizations at the same time. Further, the ability of a particular strategy to improve the governance of an international organization will depend entirely on the factual situation surrounding a given international organization.

First, those applying democratic theory to international organizations believe that good governance begins with implementing traditional democratic structures such as direct elections. For advocates of this view, the lack of democratic structures in an international organization may undercut its legitimacy. For example, the World Bank has been criticized as being undemocratic in both its selection of its President and in its voting structure. By tradition, the Bank's President has always been a U.S. national. Critics argue that this method for selecting the World Bank President is not based on the merits of individual candidates. In response, proposals have been made to change the selection process to make it more democratic. Also, the current voting and quota structure at the World Bank has been criticized because member-country votes are not structured on a one-vote-per-country rule. Rather, the Bank operates on weighted voting of the member countries, which gives greater weight to the developed countries than to the developing countries. The borrowing countries tend to hold a smaller number of votes than the donor countries, and therefore have less impact in the Bank's decision-making process. However, some scholars have refused to apply the traditional democratic theory to understand international organizations. These scholars believe that other good governance strategies not based on democratic theory provide adequate substitutes for creating legitimacy for international organizations. As a result, these scholars tend to focus on the next four types of good governance strategies.

Second, results-based governance is another type of good governance strategy. Some commentators refer to this strategy as the Weberian legitimacy because of Max Weber's focus on the positive impacts that bureaucratic governance had from employing neutral experts. Under

this strategy, international organizations gain legitimacy from maintaining a track record of positive results from the work of neutral policymaking experts. It is possible for international organizations to develop a negative track record as well. Consequently, some international organizations will have to resort to good governance strategies to recover from this negative track record. For example, many have considered the World Bank to have developed a negative track record with respect to the selection of the Bank President. Even if the selection process were to be reformed, it would take the World Bank years of positive feedback to repair its track record.

Third, international organizations may operate according to the theory of order-derived governance by exercising authority that (1) builds on tradition and (2) provides order and stability. Some commentators call this strategy Fullerian legitimacy because it stems from Lon Fuller's idea that order is a key element in good governance and the rule of law. The two foundations of this good governance strategy are clarity and stability. For example, all international organizations could increase the clarity within their governance structures by identifying each official within their organization who are responsible for negotiating and making policy. For instance, the IMF has identified officials involved in its lending and other operations, in the large quantities of work it has made available to the public. The World Bank has also started to provide its annual report and other documents containing detailed information about its projects on its website; it also has revised its information policy to provide the public with more information about its operations in general. As for stability, an international organization may be considered stable for simply being in existence for a relatively long period of time. As an international organization formed in 1944, the IMF is more stable than other international or regional organizations that were formed in the last few years.

Fourth, the theory of systemic governance creates a system of checks and balances by spreading policymaking responsibilities. Some scholars refer to systemic governance as Madisonian legitimacy because the best example of systemic governance is embodied by the federal the checks and balances system of the United States. Some scholars have advocated for the application of this theory to international organizations. The three foundations of this good governance strategy are power sharing, legality, and fairness. For example, the IMF could promote good governance within its organization through systemic governance by reforming its

quota system of voting such that it gives more power to developing countries. In other words, reforming the voting at the IMF would increase its systemic governance by promoting fairness and creating a de facto check against the developed countries that have, according to some critics, a disproportionate amount of power. Legality describes mechanisms that ensure that decision-makers do not exceed the scope of their authority. Potentially, one could install this mechanism within an international organization by creating a legal affairs division with the responsibility of checking that each decision-maker within the organization acts within the scope of his or her authority.

Fifth, international organizations may establish procedural legitimacy for themselves by focusing on the process through which they make their decisions. A few commentators call this Habermasian legitimacy, because of Jurgen Habermas' focus on the discursive theory of democracy, which entails a community coming together in a public sphere and discussing matters of interest in a way that shapes the decision-making process. Under this theory, an international organization may be able to establish its procedural legitimacy while also building the other foundations of good governance. An international organization creates procedural legitimacy by creating, and using the means for, transparent decision-making, deliberation, participation and due process. Enacting procedures to test theoretical models, review policy results, and look back on a wide set of experiences allows an international organization to create procedural legitimacy. The World Bank provides a good example in this regard. Prior to 1993, the World Bank restricted public access to documents under its control. As a result, groups that were directly affected by Bank projects could not access information about the projects, and taxpayers around the world were prevented from giving input about how the Bank was using their money. In response to criticisms about the Bank's lack of transparency, the Bank revised its information policy to ensure that informational documents are available for the public or are written specifically for the public before loan approval is given.

### ***C. Accountability***

Accountability and governance are flip sides of the same coin. In general, holding international organizations accountable means to ensure that (1) their internal policies and procedures are lawful and reflect the best interests of its stakeholders, and (2) the organization

acts according to its particular governance arrangement. In particular, the international financial institutions (IFIs) have implemented various mechanisms—such as transparency initiatives and inspection panels—to hold themselves accountable for their actions.

### **1. Forms of Accountability**

The IFI accountability mechanisms reveal two types of accountability applicable to international organizations. Vertical accountability refers to the power of oversight held by the stakeholders of an international organization. For example, member countries may express their approval or disapproval of the IFIs by changing the composition of an IFI's Board of Governors or the Executive Board. This vertical accountability mechanism is often criticized for its narrow scope; many developing countries are represented by one aggregate Executive Board member while developed countries tend to have their own Board member. On a related note, the IFIs do not follow the "one country, one vote" rule of the United Nations General Assembly. As a result of this uneven distribution of voting power, some IFIs appear *more* accountable to a limited number of countries holding the vast majority of the voting power.

Horizontal accountability refers to an international organization's power to review the conduct of its peer organizations to determine whether they are acting properly. Horizontal accountability often takes two forms at the IFIs. Both (1) the evaluation and compliance offices and (2) the independent inspection mechanisms conduct impartial investigations of the IFIs' operations and monitor the execution of the IFIs' projects.

Examining the work of non-governmental organizations (NGOs) demonstrates that stakeholders are not limited to exercising one type of accountability. For instance, some NGOs only represent nations of a particular IFI member state that has allegedly been harmed by the IFI's operations. These NGOs use vertical accountability because they want to hold the IFIs responsible to their member countries for projects directly affecting them. However, other NGOs may not be based in a specific IFI member state or have a direct stake in IFI operations. These NGOs use horizontal accountability. Their presence as members of the global community and IFI watchdogs may compel IFIs to alter their practices.

Some commentators have posited the existence of yet another type of accountability. Diagonal accountability refers to situations where IFI stakeholders (in a vertical relationship with the international organization) use the horizontal-accountability mechanisms to exercise their power of oversight. In the context of the IFIs, the use of independent inspection mechanisms by individual complainants illustrates diagonal accountability at work; individuals are IFI stakeholders that seek to hold an IFI accountable by resorting to a horizontal-accountability mechanism.

Regardless of its type, accountability at the IFIs has continued to grow in importance. This trend reflects the desire of IFI stakeholders—in particular, the non-state stakeholders—to hold these organizations accountable for the social and environmental consequences of their activities. Traditionally, IFIs have insisted that the vertical accountability model sufficed in addressing stakeholder concerns. For instance, Ibrahim Shihata has resisted calls to expand the scope of World Bank accountability to groups of individuals and non-governmental organizations because he believes that member-country governments would be better equipped than the Bank to deal with the individual/NGO grievances. However, history has demonstrated that the purely economic decisions made by the IFIs have real socio-political consequences for their stakeholders, including individuals who are often adversely affected by the very policies designed to improve their standard of living. Advocates for greater accountability have protested against the legal immunity given to the IFIs because it reduces the number of avenues through which the non-state stakeholders—in particular, the individuals affected by IFI activities—may seek redress for the consequences of IFI activities.

## **2. Organization Legal Immunity**

Immunity is an important issue related to accountability. Stakeholders of international organizations are effectively barred from taking these organizations to court. The IFIs are immune to municipal legal action under (1) domestic laws of their member states, (2) customary international law, (3) their own charter provisions, which expressly provide for their immunity from legal action. The IFIs have justified this immunity with a “functional necessity” argument—without immunity, the IFIs would be subjected to lawsuits in dozens of different state courts and would be unable to continue functioning effectively. Like other international

organizations, IFIs have also claimed that immunity is necessary to promote global uniformity in dispute resolution and to preserve the independence and prestige of the institutions.

The World Bank's charter provision on immunity is typical; the Bank allows itself to be taken before a competent court, so long as the party bringing suit is *not* "[a] member [country] or persons deriving claims from member [countries]." The World Bank claims that immunity is necessary to fulfill its functions in promoting economic development of its member countries. The Bank extends its immunity to cover its employees for actions they took on the job as Bank officials, and charges its member states with the duty to provide for Bank immunity in their domestic laws.

However, the immunity provisions of the World Bank and other IFIs reveal that IFI immunity is not necessarily absolute. For example, the Asian Development Bank allows for suits arising from the borrowing of money and sale of securities; the European Bank for Reconstruction and Development allows the EBRD to be taken to court for traffic accidents caused by its employees; and the African Development Bank allows lawsuits challenging the exercise of its borrowing powers. Additionally, many IFI charters allow the Board of Directors or the Bank President to waive the institutions' immunity if they deem the waiver to be in the best interests of their respective institution. For instance, the World Bank has allowed its debtors, creditors and bondholders to take it to court. The World Bank has waived its immunity in order to guarantee the validity of its securities and loan agreements.

For the most part, IFI member state courts have upheld immunity for the IFIs and other international organizations. Domestic courts have used various means to uphold immunity and dismiss cases against international organizations. Some of their techniques include (1) attributing an act of the organization to be outside its competency, and thus not an official act; (2) abstaining from judgment by relying on doctrines such as the political-question doctrine in the United States; and (3) upholding immunity clauses in the organization's charter and domestic immunity statutes.

However, national courts have sometimes denied immunity to international organizations. In some cases, the courts simply held that the defendant was not an international organization. Some courts have construed waivers of immunity by international organizations

very broadly. Additionally, most courts allow lawsuits against IFIs that do not implicate the organizations' core functions. One U.S. federal court held that an IFI's functions include (1) promoting investment to obtain capital; (2) assisting its member countries to make use of their resources; and (3) providing technical assistance for carrying out development projects funded by IFIs. Claims based on routine administrative activities—such as renting office space and contracting for utilities—do not implicate the core of IFIs' purposes, and so claims based on these activities would not be protected by IFI immunity. Although these exceptions demonstrate that the immunity accorded to international organizations is not absolute, it is important to note that IFI lending and financing activities are still protected from litigation. In other words, national courts have continued to uphold the IFIs' position that they need a certain degree of immunity to carry out their core functions. Even Singer—an advocate for increasingly holding the IFIs accountable to international human rights law—maintains that these institutions should only be subject to national courts when their self-regulatory mechanisms fail.

### **3. Human Rights Aspects of Accountability**

As mentioned above, the legal immunity of IFIs reduce the number of channels available to their non-state stakeholders—particularly individuals—for holding IFIs accountable for the socio-political effects of their activities. Consequently, many commentators have urged these non-state stakeholders to apply international human rights law to hold the IFIs accountable.

For instance, Skogly has argued that IFIs have obligations arising from international human rights law even though their charters may explicitly provide for an exemption. She reasons that human rights are part of customary international law and peremptory norms of international law, from which no actor in international relations may derogate. Skogly assumes that *all* human rights are binding all the time because (1) to decide otherwise only reflects certain socio-political ideologies, and (2) all human rights consist of “a minimum core . . . that may be of a customary law character.” She places the burden on the IFIs to incorporate these rights into all of its policies in a timely matter.

Skogly's views are not without its critics. Wahl points out that human rights obligations do not necessarily apply to the IFIs as seamlessly as Skogly assumes them to, because these rights were designed to prevent arbitrary state action against individuals residing within their

territories, not to govern the conduct of international organizations. It is also important to note that the IMF and the World Bank turned down invitations to join the drafting session for the UN's Covenant on Economic, Social, and Cultural Rights because they believed that sending representatives would be overstepping the boundaries of activities permitted by their charters. Lastly, it is an undisputed fact that not all human rights are actually treated as peremptory norms or customs under international law. For example, the United States has not fully endorsed the rights contained in the UN's Covenant on Economic, Social and Cultural Rights.

More moderate proposals for using human rights to hold IFIs accountable have been made. Gianviti suggests that the IMF could be governed by human rights considerations as long as its member states decided to directly incorporate them into the IMF's Articles of Agreement by amendment. Singer proposes allowing national courts to take in cases against international organizations, including the IFIs, if these organizations have not provided adequate means to assess human rights complaints against their activities.

#### ***D. Conclusion***

This paper has sought to provide a basic framework for understanding the divergent views on governance and accountability as they apply to international organizations in general, and international financial institutions (IFIs) in particular. Here, governance refers to the internal rules and procedures that an international organization employs to fulfill its goals. As such, it does not necessarily empower these organizations to act arbitrarily; rather, it is essential for them to function properly. Accountability means to ensure that (1) a given organization's governance arrangement reflects the concerns of its member countries, as well as outside stakeholders—individuals and their communities as well as non-governmental organizations; and that (2) the organization follows its governance arrangement. While IFIs have traditionally avoided judicial liability, there has been a growing trend to hold them accountable for upholding international human rights norms.

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