

Losing the Global Development War

*A Contemporary Critique of the
IMF, the World Bank, and the WTO*

John W. Head

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Foreword and Synopsis

Don't you know there's a war on? I'm not speaking of the so-called "War on Terrorism", although I'll refer to that later. Instead, I am referring to a war over the future of global development and specifically how that global development will take place—what direction it will take, how it will be financed, who will benefit from it, and what institutions will be involved in managing it. This book is about that Global Development War, about how I believe it is now being lost, and about what should be done to win it.

Aim. My main purpose in writing this book is to offer views and recommendations to ordinary informed readers, interested in the future of our world, regarding the three most important global economic organizations: the International Monetary Fund (IMF), the World Bank, and the World Trade Organization (WTO). Those organizations are standing in the middle of the Global Development War. They are on the overall field of battle where the Global Development War is being waged and are integrally bound up in the battles of that war. Hence if we are to understand the war, and stop losing it, we must pay special attention to those global economic organizations and scrutinize them closely.

Approach. Many books have been written about the global economic organizations. The titles of several of those books appear in the bibliography near the end of this work. Indeed, I have written such a book myself fairly recently.¹ Why pass this way again? Because I believe there is a need to offer a treatment of the global economic organizations that takes a very different approach from most books that have been written up to now and with a different audience in mind. To that end, the approach I have taken in the following pages has these features:

- *Broad coverage.* Many books on the global economic organizations discuss only one or two of them. The last ten years have seen, for example, numerous books (many of them well-written) on the WTO, which only started its operations a dozen years ago; many other books focus on one or the other of the two Bretton Woods Institutions—that is, the World Bank and the IMF. A few (including another one I have written) focus on one of the regional multilateral development banks that have been established over the years for Asia, Latin America,

¹ John W. Head, *THE FUTURE OF THE GLOBAL ECONOMIC ORGANIZATIONS: AN EVALUATION OF CRITICISMS LEVELED AT THE IMF, THE MULTILATERAL DEVELOPMENT BANKS, AND THE WTO* (2005).

Africa, and eastern and central Europe. There is logic in this institution-by-institution approach. After all, the aims and operations of the WTO are very different from those of the two Bretton Woods “twins” (the World Bank and the IMF); and those “twins” are certainly not identical. So it is very difficult to examine all three institutions at once. However, I believe there is much to be gained from trying to do exactly that—that is, to examine all three institutions at once—particularly if our focus is on the criticisms that have been leveled at them. Why? Because many of those criticisms apply not just to one but to two or even to all three of the organizations, and it is impossible to see the full import of the criticisms of any of them without examining the criticisms directed at all of them.

- *For a general audience.* This book is *not* written for professionals in the area of international development economics or international monetary policy or international trade regulation. Although I hope it might be of some interest to such professionals, this book is written instead with a more general audience in mind. I hope especially that it will appeal to intelligent curious readers, both in the wealthier countries and in the poorer countries, who have concerns over the current state of international economic relations but do not have the time or inclination to delve into the technical intricacies of macroeconomics indicators, exchange rate fluctuations, tariff rate reductions, and the like. (In the interest of disclosure, I should mention that those three topics and many more will in fact appear in the following pages, but in a form and context that will be easily understandable to non-economists.) My greatest hope is that some of the readers will not only be intelligent and curious but also politically motivated and influential, either as elected or appointed policy makers or as voters to whom such policy makers are (or should be) ultimately accountable. For reasons that will become clear, I am especially eager for this book to find its way to students (of all ages) focusing on international relations, politics, economics, and public administration.
- *Adequately authenticated.* Although I have written this book for a general audience, I strongly believe that I need to offer authentic, legitimate authority for certain important assertions I am making. Although I have tried to use footnotes only sparingly, I have opted to include them where I wish to emphasize that I am not engaging in conjecture or (as some writers in this area seem to do) simply making things up. I also have used footnotes to give additional details or to follow related

threads of reasoning without cluttering up the “story line” presented in the main narrative. At the same time, however, I have not attempted to provide here a text that sounds out all the details or cites multiple sources of authority for use by readers involved in research. For present purposes, that would be going overboard.

- *Based on contemporary reality.* This book, unlike some with which I hope it might “compete” successfully, tries to reflect current reality in two respects. First, it offers a critique of the global economic organizations as they exist today.² Unfortunately, some books excoriating those organizations rely on old information (before numerous reforms were undertaken) and therefore shed more heat than light. Second, this book aims to reflect current political circumstances—including, for example, the so-called “war on terrorism”, the recent Chinese government efforts to apply “soft power” to win friends, the financing crisis that currently faces the IMF, and the unusually fragile state of U.S. presidential politics (with no current or former president or vice president running for the office of president, a situation that last occurred over a half-century ago³).
- *With a legal perspective.* Few books on the global economic organizations are written from a legal perspective; most take an economic or social approach. Yet many of the criticisms of the global economic organizations reflect legal aspects of their structure and operations, as set forth in the charters that establish and govern them. Significant changes in their structure and operations would require significant changes to those charters, which are international treaties. In short, any funda-

² By “today”, I mean as of July 2007, when I completed the manuscript for this book. I should note that substantial research for this book was first carried out in the period 2003–2005, leading up to the publication of the *FUTURE OF THE GLOBAL ECONOMIC ORGANIZATIONS* book referred to *supra* note 1. That work was then comprehensively updated and revised in the first half of 2007, with special attention to new literature emerging in the past couple of years. I am responsible, of course, for any gaps or shortcomings in the effort to ensure that the book reflects contemporary reality.

³ Former or sitting U.S. presidents or vice presidents ran for the U.S. presidency in 2004 (G. W. Bush), 2000 (Gore), 1996 (Clinton), 1992 (G. H. W. Bush), 1988 (G. H. W. Bush), 1984 (Reagan), 1980 (Carter), 1976 (Ford), 1972 (Nixon), 1968 (Nixon and Humphrey), 1964 (Johnson), 1960 (Nixon), and 1956 (Eisenhower). The last U.S. presidential election in which neither the Republican nor the Democratic nominee had served as president or vice president was that of 1952, in which Dwight Eisenhower won over Adlai Stevenson. Perhaps it is in some degree a reflection of the wide-open character of the 2008 presidential contest that the state primary elections are scheduled earlier than ever. In my view, the 2008 elections and candidates should focus very carefully on issues of international relations and particularly international economic relations.

mental reform of the global economic organizations—including several that I favor—would involve *legal* reform. Moreover, the organizations exist and operate within the overall system of international law—they are legal “persons” with defined capacities and obligations imposed by that system.⁴ Indeed, some of the key criticisms of these organizations revolve around their alleged failure to give adequate attention to such international legal obligations. Because of my own background in these organizations—having worked in the legal departments of three of them—I can offer observations from a legal perspective.

- *In lively language.* Many books focusing on the global economic organizations are quite dry. Perhaps this results partly from the fact that so many of them are written for experts in the field who (are thought to) expect technical treatments. Those that are *not* written for experts in the field, but rather for a general audience, usually make for more enjoyable reading. And indeed that is part of the problem, in my view: the lively books accessible to general audiences typically lack the two features I have described immediately above. That is, they are often *not* based on contemporary reality, and they are *not* written from a legal perspective. (I believe many of them suffer from numerous other deficiencies as well, such as highly charged rhetoric, sweeping statements, unhelpful or misleading examples, etc.) My approach is to combine the values of broad coverage, a familiarity with the global economic organizations, an understanding of the current environment in which they operate, a legal perspective, and lively language to help facilitate an informed and vigorous debate about the future of these institutions, and of global development more generally.
- *Using a war analogy.* As part of my “lively language” approach, I have cast the great issues bearing on international development as a war—the Fourth World War, in fact, as described in the opening chapter of the book. Why a war? One would think that economic and social development is somehow the exact opposite of war and that such development is possible only in the *absence* of war. That is true, but my analogy does not liken the process of development to the conduct of a war; instead, I am referring to an *ideological* war that has now erupted and whose outcome will have wide implications—especially institutional, environmental, and economic implications—for our

⁴ For some details on what is meant by this notion of a legal “person” (and legal “personality”), see subsection IB3 of Chapter One.

world. As I hope to establish over the course of the book, we have entered a time of urgency and risk concerning the future course of development—specifically economic and social development in countries and regions now in distress—because of a growing global ideological fragmentation. The relatively unitary ideology that emerged and grew in the West after World War II, and that gave birth to numerous international institutions offering multilateral solutions to multilateral problems, is now under attack from many sides. I believe the attacks will only intensify unless informed and politically engaged persons mount an ideological counterattack. I want this book to contribute firepower—in the form of information and persuasive explanations—to that counterattack.

Appeal. What is the content of that ideological counterattack to which I have just referred? *I believe there is an urgent need to forge a new consensus for multilateralism and particularly to encourage the adoption of an ideology of liberal, intelligent, participatory, multilateral, and sustainable human development.* I hope this book will be regarded as an appeal to our better selves, our smarter selves, to participate in that effort, much as the Marshall Plan following World War II⁵ was at least in part an appeal to the better and smarter impulses of many persons, especially in the USA, at that time.

Naturally, it is incumbent on me to explain what I mean by those splendid words—a “new consensus for multilateralism” and an “ideology of liberal, intelligent, participatory, secular, multilateral, and sustainable human development”—and to offer persuasive reasons why these are goals worthy of our attention and commitment. That is what I shall try to accomplish in the pages that follow. In Chapter One, I describe the Global Development War in terms of its antecedents, its nature, who is fighting in it, and where it is being fought. In Chapter Two, I focus on the aspects of that Global Development War that will occupy most of our attention in this book—the battles now being fought over the global economic organizations. Specifically, Chapter Two quickly enumerates the main criticisms that are being leveled at those organizations, based on an extensive survey of the literature from the academic world, from practitioners and professionals, and from the ever-more-diverse popular press. Then in Chapter Three I explain as a factual, legal, institutional, and financial matter just what the global economic organizations are. My aim in that chapter is to offer an account of

⁵ The Marshall Plan, under which unprecedented levels of official financial support were provided to rebuild war-torn Europe, is discussed in subsection IC of Chapter Three.

those organizations that is simple and straightforward but in enough detail to understand and evaluate the specific criticisms now being leveled at them.

In Chapters Four and Five, I offer my own assessment of those specific criticisms. Chapter Four addresses criticisms that apply mainly to the policies and operations of the global economic organizations; these may be regarded as objections to how the organizations behave “on the ground” in relation to the populations in their member countries. Chapter Five focuses on those criticisms that apply mainly to those organizations’ “character, control, and reach”; these may be regarded as objections to how the organizations behave “institutionally”—that is, in relation to their member states (and the governments of those states). Lastly, in Chapter Six I address the pivotal question of whether the global economic organizations should be reformed or simply rejected—and if the former, then what specific types of reforms should be undertaken. I close that last chapter by returning to the theme of multilateralism and offering some observations about the role the USA in particular should play in the future of the global economic organizations (GEOs), so as to use this country’s great influence to build an ideological consensus to stop losing the Global Development War.

What do I mean when I suggest that we are currently “losing” the Global Development War? Let me address that question here in a preliminary way, with the promise that my answer will become clearer through the pages that follow.

I believe we are now losing the Global Development War in three related respects. First, we—that is, the world’s societies collectively, and especially those of us in the rich, “developed” world—are failing to expand and improve on the multilateralism of the past, particularly the multilateral approach that emerged at the close of World War II to address economic and political problems having global dimensions. Just as a bicycle rider will typically fall over unless the bicycle is moving forward at some reasonable speed, so the process of multilateralism must be moving forward at some reasonable pace in order to stay on track. Recent developments reveal that instead of moving forward briskly with the process of multilateralism—for example, by expanding and improving on the Uruguay Round trade liberalization exercise with far-reaching initiatives—we are permitting a serious slowdown in the pace of multilateralization, as reflected recently in the breakdown of the Doha Round of trade negotiations.

A second way in which we are losing the Global Development War is closely related to the first. In some respects, there is an actual unraveling of the multilateralism that emerged after World War II. That is, in certain ways the bicycle rider seems to have stopped pedaling entirely, dismounted

from the bicycle, and started walking backwards. Why? Because of doubts both about her destination (which direction she is going) and about the bicycle as a means of transport (that is, about how she is getting there). What we shall see in Chapter Two is a huge outcry—a crescendo of criticism—casting both sorts of doubt on the global economic organizations, claiming not only (1) that the ideological foundation on which they rest (like the bicycle’s destination) is misconceived but also (2) that deep institutional failings require that those global economic organizations be abandoned (shut down), at least in their present form, on grounds that they are unworkable vehicles for getting to *any* desired destination.

What is wrong with this picture? What is wrong is the fact that many of the criticisms of the global economic organizations are simply off base because they rely on outdated information or fundamental misunderstandings of what those organizations are, why they were created, how they are structured, and how they operate. Like Gresham’s Law, under which bad money runs out the good,⁶ the invalid criticisms threaten to run out the very legitimate ones. In other words, one way in which we are losing the Global Development War is by allowing invalid assertions to influence our policy makers (and ourselves) in determining whether, and how, to stick with the multilateral approaches established sixty years ago to manage international economic relations.

A third way in which we are losing the Global Development War comes as a direct consequence of the two trends I have identified above. Because there is a slowdown in the process of multilateralization, and even a reversal in some respects, ideological and institutional alternatives are starting to gain influence. Just as nature abhors a vacuum, likewise any drop in commitment to improving and expanding upon the multilateral ideology and institutions that were so strong following World War II will naturally attract competitors. One such competitor is the sort of bilateral assistance that China (more precisely, the government of the People’s Republic of China (PRC)) has started to engage in recently, lending money to governments in Africa and elsewhere on terms that are devoid of such conditions

⁶ Gresham’s Law, named after Sir Thomas Gresham (1519–1579), is stated simply as “bad money drives good money out of circulation”. Despite its attribution to Gresham, the “law” actually has earlier origins, as both ancient and medieval references were made to the tendency of lightened, debased, or worn coins to have assigned to them the same official value as coins containing greater quantities of precious metal. This tendency would lead to “bad” coins (those possessing a relatively low metallic content) being offered in routine payments, while “good” coins were withdrawn into hoards, exported, or reduced through clipping or “sweating” to an intrinsic value no greater than that possessed by their “bad” counterparts. For further information, see <http://eh.net/encyclopedia/article/selgin.gresham.law> (last visited June 24, 2007).

as economic policy reform, participatory project design, good governance, or other issues that the World Bank in particular has increasingly paid attention to in recent years.

Why does any of this matter? Again, I trust that the following pages will show in some detail how I answer that question. My view in a nutshell is this: the ideological and institutional failings I have identified above—our failure to move forward briskly with an improved and expanded multilateral approach in the context of the global economic organizations, plus the supplanting of that approach with an inferior one—all lead toward the largest failing of all; we are losing ground in the effort to meet the great challenge of our time. That challenge, on which our collective future depends, is to bridge the dangerous and desperate gap in living conditions of human beings around the world.

In addition to the appeal I have made above—for support in forging a new consensus in favor of multilateralism—I also wish to make another sort of appeal—for comments. The global economic organizations are complicated, as are the problems they were established to solve. Given their complexity, exacerbated by my own limitations, I have surely made numerous mistakes in explaining them, in evaluating the criticisms leveled against them, and more generally in writing about the international environment in which they operate and the Global Development War in which they are currently involved. I take responsibility, of course, for all those mistakes and shortcomings, and I welcome comments, corrections, and suggestions from any and all quarters. In particular, I would appreciate comments (1) from harsh critics of the global economic organizations and (2) from those whose lives are most directly affected by the operations of those organizations—and especially the residents of economically less developed countries. Their fortunes and futures are inextricably linked to those of my family, friends, and compatriots, and therefore I have tried to reflect their voices in this book. I would welcome criticisms for my shortcomings in this effort.

J. W. Head
July 2007

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List of Abbreviations and Acronyms

ACWL	Advisory Centre on WTO Law
ADTA	advisory technical assistance
AfDB	African Development Bank
AsDB	Asian Development Bank
AsDF	Asian Development Fund
CCL	Contingent Credit Line
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
DFI	development finance institution
DSU	Dispute Settlement Understanding
EBRD	European Bank for Reconstruction and Development
EEC	European Economic Community
EFF	Extended Fund Facility
ESAF	Enhanced Structural Adjustment Facility
EU	European Union
EXIMBANK	US Export-Import Bank
GATS	General Agreement on Trade in Services
GATT 1947	General Agreement on Tariffs and Trade, 1947
GATT 1994	General Agreement on Tariffs and Trade, 1994
GCI	general capital increase
GEF	Global Environment Facility
GEO	global economic organization
GMO	genetically modified organism
GNP	gross national product
GSP	Generalized System of Preferences
IADB	Inter-American Development Bank
IBRD	International Bank for Reconstruction and Development
ICSID	International Convention/Centre for the Settlement of Investment Disputes
IDA	International Development Agency
IEO	Independent Evaluation Office (IMF)
IFC	International Finance Corporation
IFI	international financial institution
ILO	International Labour Organization
IMF	International Monetary Fund
ITO	International Trade Organization (never formed)
LDC	less developed country
MDB	multilateral development bank
MDRI	Multilateral Debt Relief Initiative
MFN	most-favored nation
MfDR	Managing for Development Results (initiative)

NAAEC	North American Agreement on Environmental Cooperation
NAFTA	North American Free Trade Agreement
NGO	non-government organization
NTB	non-tariff barrier
OCR	ordinary capital resources
OECD	Organization for Economic Cooperation and Development
PITA	project implementation technical assistance
PPTA	project preparatory technical assistance
PRC	People's Republic of China
PRGF	Poverty Reduction and Growth Facility
PRSP	Poverty Reduction Strategy Paper (IMF)
RETA	regional technical assistance
SAF	Structural Adjustment Facility
SCI	special capital increase
SCM	Subsidies and Countervailing Measures (agreement)
SDR	special drawing rights
TA	technical assistance
TAA	Trade Adjustment Assistance (program)
TPRM	Trade Policy Review Mechanism
TRIMs	Trade-Related Investment Measures (agreement)
TRIPs	Trade-Related Aspects of International Property Rights (agreement)
UN	United Nations
UNCITRAL	UN Commission on International Trade Law
US	United States
USAID	US Agency for International Development
WTO	World Trade Organization

Notes on Spellings, Usages, and Other Conventions

In this book, I have followed certain conventions on spelling, punctuation, and usage that might be unfamiliar to some readers. These conventions include the following:

- Throughout this book, the term “state” carries the meaning it has in international law—that is, as a nation-state and not as a subsidiary political unit such as the individual domestic states that make up federal nation-states such as India, or the USA, or Mexico.
- In most references to the People’s Republic of China, I have used the abbreviation “PRC”, rather than using the name “China”. This facilitates separate reference, when necessary, to (1) the Republic of China (ROC) on Taiwan or to (2) China as a single social and political entity, especially in the years before 1949.
- The acronym noun “USA” is often used in this book in preference to the commonly used noun “United States”, inasmuch as there are other countries (such as Mexico) with the title “United States” in their official names. However, the term “US” has been retained for use as an adjective referring to something of or from the USA, such as “US legislation” or “US states”.
- I have opted for the use of “US” and “USA” without periods, as this seems to be the more modern trend and also follows the usage found in acronyms for other political entities such as the United Nations (UN) and the People’s Republic of China (PRC). Naturally, I have not changed “U.S.” to “US” in any quoted material or official citations.
- I have used the spelling “Basle” (as in the Basle guidelines on capital adequacy) throughout this book in the interest of consistency, even though the alternative spelling “Basel” appears to be more commonly used in certain contexts.
- Citations to books, articles, treaties, and other legal materials appear in a less abbreviated style than that used by many US law journals and books. I believe the heavily abbreviated style used in US legal texts can be so unfamiliar to a general audience as to create confusion or uncertainty. In addition, in the case of books, I have departed from the practice of putting the authors’ names in all capital letters. Instead, authors’ names for all works—books and articles and other items—appear in

regular upper case and lower case letters; then titles of books appear in large and small capitals and titles of other works appear in italics or, in a few cases depending on the nature of the work, in regular font with quotation marks.

- I have followed the less-used but more logical convention of placing quotation marks inside all punctuation (unless of course the punctuation itself is included in the original material being quoted). Doing so allows the text to reflect more faithfully how the original materials reads.⁷
- The possessive form of words that end in the letter “s” have not had another letter “s” added to them—hence I have cited Dr. Ngairé Woods’ writings, not Dr. Ngairé Woods’s writings.

⁷ In defense of my decision to use this approach, I would refer readers to H. W. Fowler, *A DICTIONARY OF MODERN ENGLISH USAGE* 591–92 (2d ed. 1965):

Questions of order between inverted commas [quotation marks] and stops are much debated. . . . There are two schools of thought, which might be called the conventional and the logical. The conventional prefers to put stops within the inverted commas, if it can be done without ambiguity, on the ground that this has a more pleasing appearance. The logical punctuates according to sense, and puts them outside except when they actually form part of the quotation. . . . The conventional system is more favored by editors’ and publishers’ rules. But there are important exceptions, and it is to be hoped that these will make their influence felt. The conventional system flouts common sense, and it is not easy for the plain man to see what merit it is supposed to have to outweigh that defect; even the more pleasing appearance claimed for it is not likely to go unquestioned.

The Fourth World War

The twentieth century saw four world wars start. The first three of those world wars were World War I (hoped at the time to be the war to end all wars), World War II, and the Cold War. Those three wars not only commenced in the twentieth century but also concluded in that century. The fourth war started in the twentieth century but has not yet ended. It is the subject of this book.

The fourth world war I refer to is the Global Development War. In several respects, it follows in the same progression that is evident in the first three world wars. First, it involves most of the countries of the world, unlike pre-twentieth-century wars. Second, it continues the trend away from conflict played out mainly on physical battlefields (as were World War I and World War II) toward conflict played out mainly by economic and other non-military means. For example, although the Cold War did involve proxy military confrontations (as distinct from direct military engagement between the USSR and the USA), it also involved *economic* pressures, sanctions, victories, and losses. The Global Development War is almost purely non-military in character, although it certainly has military repercussions in the sense that many countries suffering economic distress find themselves drawn to violence, including military violence.

Third, the Global Development War also continues another trend begun in the earlier world wars—away from predominantly territory-based conflict and toward predominantly ideology-based conflict. And ideology is at issue in another way: the Global Development War will be won or lost depending on what ideology of development prevails over the course of the next several years.

My aim in this chapter is to explain what I mean in using the term “Global Development War”. My explanation begins by identifying certain key features of the three world wars that started earlier in the twentieth century (as well as my reason for conflating the Cold War with World Wars I and II for these purposes), and then offers a more detailed description of the Global Development War itself. In particular, I shall enumerate the main elements of the conflicting development ideologies that are at work today. I close the chapter by indicating the allies, the adversaries, and the fields of battle of the Global Development War.

I. ANTECEDENTS TO THE GLOBAL DEVELOPMENT WAR

A. World War I

My mother's father fought in France in World War I, in the late "teens" of the twentieth century. He had only emerged from his own "teens" shortly before he went to fight. Although he and others were probably unaware of it at the time, that war brought a cluster of changes that fundamentally altered international relations. Two of those changes are particularly important to the subject of this book.

1. *Self-Determination*

First, the war gave birth to the notion of "self-determination of peoples". Among the Fourteen Points that US President Woodrow Wilson pressed for in the aftermath of the war was the notion that a certain level of self-governance should be accorded to the populations of territories held under colonial rule. Apparently to the consternation of some of his own advisors, Wilson favored a move toward the granting of self-determination as a matter of principle. His view did not call for immediate decolonization in respect of the territories held by countries that had been in the alliance that won the war—nor would the gradual move toward self-governance that he envisioned be an entirely one-way street. Instead, the interests of the colonizing states would be taken into account, and this presumably would involve some compensation to be paid to those states for their alleged contribution to the development of the colonized territory. Despite these qualifications and limitations, however, the notion of self-determination received the breath of life as a result of Wilson's view of the proper order of things in a post-war world.

Curiously, Wilson's endorsement of self-determination of peoples was echoed by (or perhaps even preceded by) the writings and speeches of Vladimir Lenin, the leader of Russia following the Bolshevik Revolution and the establishment of what would in 1923 come to be called the USSR. For Lenin, self-determination was attractive mainly for a very different reason: the stripping of colonial holdings from European powers would be to Russia's relative advantage.

How does the notion of self-determination relate to the Global Development War? The linkage is actually quite direct:

- (1) General acceptance of the notion of self-determination of peoples gave a strong legal and political boost to the advocates of decolonization,
- (2) The process of decolonization gained enormous momentum just a few decades later, so that by the 1960s the composition

of the “international community” of independent nation-states had changed dramatically in number and economic circumstances.

- (3) Most of the new nation-states emerging from colonialism were seriously lacking in financial resources, in local professional and governmental talent, and in political and social stability.
- (4) It was those same states that by the 1980s posed the most profound challenges in terms of global development.

That entire progression of events, which we shall explore later in this chapter, was fueled in part by the notion of self-determination emerging after World War I.

2. *Presumptions Upended*

A second change that World War I signaled was what Antonio Cassese has described as a fundamental reversal of presumptions:

What is striking about the new period following the first world conflagration is that disparity [among states] and domination [of weak states by stronger states] were no longer taken for granted. The view that these [circumstances] should be suppressed or gradually tempered became strong. Needless to say, unequal relations continued to exist; in some instances they became even more deeply entrenched. However, this state of affairs was no longer accompanied by acquiescence. . . . [This change in presumption] was best expressed by Nehru, who said in 1956: “The spirit of the present age is opposed to any kind of domination of one over the other, whether it is national domination, economic, class or racial. There is a strong urge to resist this kind of domination”.¹

In short, instead of working under the presumption or expectation that inequality and domination were “part and parcel of the human condition”,² the international community adopted the opposite presumption—that of equality, including equality of states. That presumption was to find expression in the Charter of the United Nations (UN), signed in San Francisco in June 1945. The UN Charter includes several references to the “principle of the sovereign equality of all its Members”.

¹ Antonio Cassese, *INTERNATIONAL LAW IN A DIVIDED WORLD* 56 (1986) (internal citation omitted).

² *Id.* at 55. Cassese explains that the presumption of inequality “was pithily, succinctly, and painfully expounded in 1773 by Dr. Johnson”, who claimed that “Mankind are happier in a state of inequality and subordination”.

4 • *Losing the Global Development War*

Like the emergence of the notion of self-determination of peoples, this reversal of presumptions in favor of the equality of states—or more precisely the *legal* equality of states—relates directly to the Global Development War. Once the huge flock of recently decolonized states joined the international community, a great struggle began over how to deal with the reality of their circumstances and particularly their lack of resources. Was their equality, as a legal matter, to translate into some sort of obligation on the part of the older, wealthier states to provide financial support? Did the equality of states, as a legal matter, mean that economic pressures and sanctions by wealthy countries on poorer countries were unlawful? These and similar questions became prominent in the 1970s, as we shall see later.

B. World War II

Unfortunately, this brief account of the backdrop to today's Global Development War must omit many fascinating and significant developments that occurred in the years between World War I and World War II. The debilitating rejection that Woodrow Wilson received on his return from Versailles to a nation yearning for isolationism, the repeated and ultimately futile international efforts to impose rules restricting the use of force by one state against another, the novel steps taken by the League of Nations (often maligned for its ineffectiveness, even though we seldom ridicule a baby who falls the first several times she tries to walk)—all these we must pass over too quickly in order to focus on three developments that bear directly on our subject.

1. *Global Economic Issues Break the Political Surface*

One strategy pursued by the victors at the 1919 Versailles Peace conference following World War I is roundly criticized now and has been for many decades. It is commonly acknowledged that the heavy requirements for reparations that the victors imposed on Germany at Versailles led inevitably to the economic distress that that country suffered in the 1920s and 1930s, which in turn gave Adolf Hitler and the National Socialist Party an opening to take power. Other factors also contributed to that progression of events, of course, and to the overall economic turmoil that grew in the years leading up to the outbreak of World War II in Europe. One such factor was the Great Depression in the USA—usually said to have struck on a Black Tuesday in October 1929, although for farmers in the Midwest, including those in my family, it was in full swing in the early 1920s.

In short, a confluence of factors put terrible pressures on international economic relations in the “inter-war years” of the 1920s and 1930s. Several details in this regard, and in particular how the developments in those

years influenced the design of the IMF, will be explored in Chapter Three. For present purposes, suffice it to say that economic issues had broken the international political surface by the 1940s. Before that time, the international community expressed relatively little interest in matters of economic regulation imposed by national governments. Indeed, those national governments themselves typically had only scant experience with economic regulation before the 1930s—which is why President Franklin Roosevelt’s New Deal program of legislation and public works, and the raft of financial legislation to regulate banking and securities firms, created such a stir in the USA. But by the end of World War II, interest in economic regulation at the international level, as well as the national level, was firmly in place. From that point on, the international community would regard global economic problems, such as those that contributed to World War II, as requiring multilateral attention.

2. *Human Rights Rumbblings*

The same is true of human rights. A decade or so before the beginning of World War II, it would have been difficult to find anyone, trained in the law or not, who regarded individuals as being “subjects” of international law—that is, as entities subject to the rights, obligations, and processes of the law governing international relations. Instead, the sole “subjects” of international law as of the 1930s, and even in the mid-1940s, were nation-states. Individuals, associations, and private corporations were all outside the system of international law. This changed dramatically as of 1945.

Before examining that change, it is worth taking a detour to note that international law had not always (before the 1930s) seen states as the sole “subjects” of international law. Strictly speaking, of course, there was no “international law” at all before the rise of the nation-state, a process that was completed in Europe around the sixteenth and seventeenth centuries—and even the term “international law” was not used until Jeremy Bentham introduced it in the late eighteenth century in his exuberant passion for classifying and codifying laws. But for at least a couple of centuries before that, since the time of Hugo Grotius (the so-called “father of international law”) in the early 1600s, the international community had viewed the rules of international law (referred to then as the “law of nations”) as imposing obligations and conferring rights on individuals as well as states. Expressed differently, the view was commonly held that certain rules that were truly outside the control and authority of a particular national government did in fact apply to individual human beings.

That view had virtually disappeared by the early part of the twentieth century, and hence the proposition that an *individual* could be held respon-

sible under some rule of *international* law would have been dismissed before 1945. The Nuremberg trials changed that. Those trials were conducted under the authority of a treaty concluded in 1945 among the winning Allied powers. That treaty declared that individuals could be held personally liable for three specific types of actions: those that constituted a breach of the peace; those that constituted war crimes (unlawful conduct of military hostilities); and those that constituted crimes against humanity. The key targets of the prosecution under the Nuremberg charter, of course, were the top Nazi war leaders.

Why is this development—the sudden reapplication of international law to individual human beings—pertinent to the later outbreak of the Global Development War? Again, the linkage is quite direct: Application of international legal *obligations* to individuals set the stage for application of international legal *rights* to individuals, which served as the legal foundation for the international human rights movement; and it is that movement that, with special intensity starting in the 1980s and 1990s, has brought great pressure on the global economic organizations and their involvement in development assistance. It is possible to draw a fairly straight line of connection from 1945 (the Nuremberg Charter and the trials conducted under it) to 1948 (the adoption of the Universal Declaration of Human Rights by the UN General Assembly) to 1967 (the adoption of the two key human rights treaties, called the International Covenant for Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights) to the adoption in the 1980s and 1990s of numerous human-rights-oriented policies in the World Bank.

3. *International Law and International Organizations*

A third product of World War II is the change in attitude toward international organizations. I refer here to the sort of public-sector, inter-governmental international organizations of which states are the members. Obviously, the global economic organizations (World Bank, IMF, WTO) are such entities. So is the United Nations. Before the establishment of the UN at the close of the war (actually, the San Francisco conference to conclude the UN Charter occurred *before* the dropping of bombs on Hiroshima and Nagasaki brought the war in the Pacific to a close), the status of such international organizations was unclear. This is hardly surprising. Aside from the League of Nations (1920) and two narrowly focused organizations dating from the late 1800s (the Universal Postal Union and the International Telegraphic Union), there had been almost no experience with permanent inter-governmental organizations. The United Nations was therefore a rather new type of entity, of uncertain legal status.

That legal status was clarified soon. In an advisory decision by the International Court of Justice (the judicial arm of the United Nations) in the late 1940s, the United Nations was declared to be a subject of international law.³ That decision, in the so-called *Reparations* case⁴ (to determine whether the United Nations had legal capacity to bring a legal action in respect of casualties suffered by some of its personnel), established that international organizations such as the United Nations, while not the same things as states, did in fact have attributes analogous to states, including the capacity to sue and be sued, to own and transfer property, to enter into contracts, and more.

The *Reparations* decision, and the status it declared for international organizations, gets our attention because it applies also to the global economic organizations. In this manner, and because of the other developments summarized above, World War II—like World War I—forms part of the backdrop to the Global Development War. Those earlier wars are therefore antecedents to the current war.

C. The Cold War

How was the Cold War different? One obvious distinguishing mark is that the Cold War, unlike the First and Second World Wars involved little significant direct military confrontation between the two principal contestants—the USA and the USSR. There was much violence, of course, and there were numerous battles by proxy; countries were pressured to align with one or the other of the two superpowers, and struggles over these alignments (or subsidiary alignments) played out in several places, including Korea, Vietnam, Cuba, and several countries in Africa. But the war was considered “cold” because despite the expenditure of huge sums of money on military aid and arms build-ups—money that was therefore unavailable for foreign development assistance—the result was not a traditional conflict over territory by means of military force. Instead, the Cold War centered primarily on a different kind of conflict, expressed by different means.

³ As noted above, a “subject” of international law is, in this context, an entity that is subject to the rights, obligations, and processes of the law governing international relations.

⁴ *Reparation for Injuries Suffered in the Service of the United Nations*, 1949 I.C.J. Reports 174, 178–179.

1. *A Bold Experiment*

At the nucleus of the Cold War was a struggle over ideology, or rather two types of ideology: economic ideology and political ideology. Shortly after the Allied victory in Europe, the discomfort that many in the US and the UK governments had felt toward the Soviet leader with whom they had dealt during the war was vindicated. Stalin took the USSR on a bold long-term adventure of economic and political conquest (and massive repression, murdering millions of people) that eventually resulted in a sphere of influence stretching from the middle of Germany (that is, the border of East and West Germany) to the far eastern reaches of Russia, ending at Manchuria and Sakhalin island.

Of most concern, of course, in the eyes of Western observers were the countries of eastern and central Europe—Hungary, Czechoslovakia, Poland, the Baltic states, and others—over which the Soviet political and economic expansion extended. Winston Churchill, ironically pushed from political power in the UK shortly after the war, brought world attention to the Soviet adventure in his March 1946 “Iron Curtain” speech at Westminster College in Fulton, Missouri. My father was there for that speech and heard Churchill say this:

From Stettin in the Baltic to Trieste in the Adriatic⁵ an iron curtain has descended across the Continent. Behind that line lie all the capitals of the ancient states of Central and Eastern Europe. Warsaw, Berlin, Prague, Vienna, Budapest, Belgrade, Bucharest and Sofia; all these famous cities and the populations around them lie in what I must call the Soviet sphere, and all are subject, in one form or another, not only to Soviet influence but to a very high and in some cases increasing measure of control from Moscow. . . .

In a great number of countries, far from the Russian frontiers and throughout the world, Communist fifth columns⁶ are established and work in complete unity and absolute obedience to the directions they receive from the Communist center. Except in the British Commonwealth and in the United States where Commu-

⁵ Stettin is a city in the very northeast corner of Poland, near the Baltic Sea; Trieste is a city on the Adriatic Sea at the border of Italy and present-day Slovenia.

⁶ The term “fifth column” is usually meant to signify a group of secret or clandestine sympathizers working within a country’s borders to help a foreign power conduct espionage or sabotage activities in order to undermine local control or solidarity. According to some sources the term originated from the time of the Spanish Civil War, in the 1930s.

nism is in its infancy, the Communist parties or fifth columns constitute a growing challenge and peril to Christian civilization. . . .

The outlook is also anxious in the Far East and especially in Manchuria. . . .

I do not believe that Soviet Russia desires war. What they desire is the fruits of war and the indefinite expansion of their power and doctrines.

The political and economic ideologies that the Soviets were pressing—and that the USSR continued to press for forty-plus years (from that point just following World War II through to the fall of the Berlin Wall in 1989)—featured centralized state planning of economic activity (communist socialism) and a centralized state authoritarian form of government. Of course many wars, including World War I and World War II, can be said to have involved ideology. A distinguishing mark of the Cold War, however, is that the ideological contest was carried out without much direct military conflict between the two powers whose ideologies were most explicitly at issue.

Of this pair of ideologies, it was the economic ideology of communism (or communist socialism) that constituted the more noteworthy “bold experiment” I refer to in the heading for this subsection. (The other ideology, centralized state authoritarianism, is hardly novel in itself.) Built on Marxist-Leninist thought, communism is an ideology that seeks to establish a classless, stateless form of social organization that is based on common ownership of the means of production and that can (according to its proponents) be established only by means of a “dictatorship of the proletariat”. Growing out of the socialist movements that themselves responded in large part to the enormous social and economic displacement brought by the industrial revolution of the late 1800s and early 1900s, communism was the ideology energizing the leaders of the Bolshevik Revolution that gripped Russia in 1917 and from which the USSR emerged officially about half a decade later.

2. Economic Assistance and Ideological Influence

It was against this economic ideology of communism that the Western ideology of capitalism competed during the Cold War. And this competition took many forms. One of them was a vying over foreign economic assistance (and the friends it could win), and it is this phenomenon that makes the Cold War especially relevant to the Global Development War. From the early days of the Cold War the US government saw a need and an advantage to provide economic assistance to contribute to the rebuilding of Europe. We shall see in Chapter Two that the rebuilding of Europe was

the principal reason for establishing the World Bank (or, more technically, the branch of the World Bank called the International Bank for Reconstruction and Development). Although the US government was a prime mover in that initiative, which resulted in lending to European governments within a short time after the war ended, the US government then decided to take further, faster, and more generous action to spur European reconstruction. That action was the Marshall Plan, under which the US government provided massive financial support to European countries.

Other initiatives mirroring the Marshall Plan—that is, initiatives to provide generous assistance (usually in the form of grants) to countries in need of reconstruction and development—were also started in the years following World War II. By the early 1960s many of these had been institutionalized within the US government. The initiatives included establishing the US Agency for International Development (USAID) and the largely unsuccessful Alliance for Progress, which was created under President Kennedy in 1961 with the aim of boosting economic cooperation between North and South America largely in order to counter the perceived emerging communist threat that Cuba seemed to pose to US interests and dominance in the region. Likewise, the Peace Corps was also established in the 1960s.

Were these efforts at economic assistance and influence directly related to the Cold War? An interesting study coming out of Georgetown University suggests that they were. Based on sophisticated econometric analysis of seventeen donor countries (not just the USA), the study⁷ concludes that the end of the Cold War around 1990 was the principal reason for a substantial reduction in development assistance and other forms of foreign aid.

The significance to us of this linkage between the Cold War, ideology, and development assistance is that it reinforces the view that the Cold War laid the groundwork for the Global Development War at issue in this book. When we turn our attention shortly to the nature of that Global Development War, we shall see that its early days overlap with, and draw from, the Cold War.

3. *A Giant with Nightmares*

According to folklore, Napoleon Bonaparte once pointed to China on a world map and observed: “There lies a sleeping giant. Let him sleep! If he wakes he will shake the world”. As an economic matter, China is now

⁷ Anne Boschini and Anders Olofsgård, *Foreign Aid: An Instrument for Fighting Communism?*, available at <http://www.georgetown.edu/faculty/afo2/papers/aidrevapril04.pdf> (last visited Feb. 25, 2007).

wide awake and has been for a quarter-century. In the years that it was asleep, it had frightful nightmares—devastating internal wars, humiliation at the hands of foreign powers, wrenching social and cultural revolutions, and other disasters.

China's reawakening occurred near the end of the Cold War period⁸ and is linked in a peculiar and coincidental way with that ideological conflict. We should look briefly, therefore, at this third way in which the Cold War stands as an important antecedent to the Global Development War.

My family and I lived and traveled in China briefly in the mid-1990s. That experience has served as a springboard for further study I have undertaken into the history and significance of China.⁹ Here, in a very abbreviated bullet-point form, are my observations on the historical, economic, and political progression by which today's PRC¹⁰ has come to play a large and not yet fully defined role in the Global Development War.

- The fall of the Qing Dynasty in 1911 threw China into turmoil, even greater turmoil than it had suffered during its nineteenth century troubles that brought China to its knees politically.
- From the turmoil of the first few decades of the twentieth century emerged a strong Chinese Communist Party. It espoused a derivative form of communism—derived from and inspired by the rise of communist power in Russia.¹¹ (Indeed, the

⁸ It is worth remembering that the bloody suppression of reform-minded demonstrators in Beijing's Tianenmen Square occurred in the same year—1989—as the fall of the Berlin Wall. It is widely acknowledged that China's political leaders were prepared to take drastic measures to prevent their own control from being shaken by chaos of the sort they saw occurring in central Europe at that time.

⁹ This further study has resulted in several publications. One of them is *LAW CODES IN DYNASTIC CHINA: A SYNOPSIS OF CHINESE LEGAL HISTORY IN THE THIRTY CENTURIES FROM ZHOU TO QING* (Carolina Academic Press, 2005) (co-authored with Yanping Wang).

¹⁰ For an explanation on my use of "China" and the "PRC" (People's Republic of China), see the Notes on Spelling, Usages, and Other Conventions at the beginning of this book.

¹¹ Would the Chinese approach have been different without the model of Russian communism to follow? We can only speculate, of course, but it seems likely that the already-established ideological "package" of Marxist-Leninist thought gave the Chinese Communist Party, and Mao in particular, a peculiarly rich fuel to use in driving forward with a consolidation of political, economic, and social control. As many Chinese scholars have argued, the urge toward such political, economic, and social control was already strong in China following many centuries of dynastic rule; but the pre-packaged ideological justification surely added formal legitimacy to the communist rule in China in the 1950s and beyond.

Chinese Communist Party was formally founded in 1921, just four years after the Bolshevik Revolution.)

- That Chinese Communist Party, which was headed beginning in the 1930s by Mao Zedong, defeated the Guomintang (Nationalist Party) armies in the late 1940s—forcing them to flee to Taiwan, where they established a government in exile that never succeeded in reclaiming the mainland.
- In 1949, Mao officially declared the existence of the People’s Republic of China, which embarked then on a bold experiment similar to that of the communist authorities in Russia—centralized state planning of economic activity (communist socialism) and a centralized state authoritarian form of government.
- That ideological package, supplemented with Maoist thought,¹² underwent some mutation in response to the economically disastrous results of Mao’s Great Leap Forward in the late 1950s (we shall examine that more closely later in this chapter) and with the cooling of political relations between the PRC and the USSR. The PRC’s economic ideology then changed more dramatically after Mao’s death in 1976 and with the assumption of power by Deng Xiaoping, so that today the economy has many market-based capitalist aspects to it.
- Those aspects, combined with many other factors, have brought breathtaking economic growth to the PRC for the last two decades, placing it now in a position of great strength.

The PRC is starting to use that strength today in the same way that the USA did during the Cold War—to win friends and allies for economic and political gain (and particularly to solidify access to markets and resources), by providing generous foreign assistance, including development assistance. However, as will be discussed below in section IV of Chapter Six, that Chinese development assistance seems to reflect an ideology that will constitute an important front in the Global Development War.

II. THE NATURE OF THE GLOBAL DEVELOPMENT WAR

The three world wars discussed above—World War I, World War II, and the Cold War—began in the mid-teens, the late 1930s, and the late 1940s, respectively. The first two of them, fought with weapons and lives, lasted

¹² The Constitution of the People’s Republic of China enshrines in its preamble “the leadership of the Communist Party of China and the guidance of Marxism-Leninism [and] Mao Zedong Thought”. It also reflects the influence of Mao’s political successor in its reference to “Deng Xiaoping Theory”.

only a few years each. The Cold War lasted just over forty years. The Global Development War started around 1960—in fact, we might conveniently mark its beginning in that year (1960) when the International Development Association (the “soft loan window” of the World Bank) and the earliest of the regional development banks were established to address economic problems of the Third World—and that war is still being waged today. The following paragraphs describe that war and what is at stake in it.

A. Conflicting Development Ideologies

As noted above, the Cold War differed from World War I and World War II in terms of its objects and methods. In simplistic terms, we might regard the difference as representing a shift from territory to ideology: the objective of gaining control over territory by means of direct military action was in large part replaced by the objective of expanding the influence of a particular ideological package by indirect means. Still in simplistic terms, the competing ideological packages may be said to have been these:

- (1) in the case of the USSR, centralized state planning of economic activity (communist socialism) and a centralized state authoritarian form of government;
- (2) in the case of the USA and its strong European allies, market-based capitalism and a pluralistic representative form of government.

The Global Development War is more complicated than the Cold War was. The Global Development War involves battles and skirmishes on a broader array of ideologies. To put it in its starkest form, it may be seen as a war over the developmental ideology that is to be adopted and followed in the coming years and particularly whether to accept or reject an ideology of liberal, intelligent, participatory, multilateral, and sustainable human development.

Let me try to “unpack” that phrase—“an ideology of liberal, intelligent, participatory, multilateral, and sustainable human development”—by offering a description of what each element of it means and what the opposite approach would mean. I start with the last word in the phrase, “development”, which is the noun that all of the other words in the phrase modify.

1. Development

In the international development community—that is, the large and disparate group of people and institutions involved in the work of the World Bank, the national official bilateral development aid agencies (such as the US Agency for International Development, referred to above), and the countless non-government organizations (NGOs) that say they focus on

“development”—that term carries a cluster of meanings. At the center of the cluster, beyond any real debate, is the building of physical infrastructure, such as bridges, hospitals, farm-to-market roads, school buildings, power-generation plants, airports, harbor facilities, and the like. While some members of the international development community who regard themselves as more modern or enlightened might disparage a view that conceives “development” so narrowly as to include *only* the building of physical infrastructure, there is little doubt that this activity lies at the central core of settled meaning of the term “development”.

Beyond the building of physical infrastructure, “development” also encompasses the creation or strengthening of processes and institutions involved in the efficient operation of economic activity. It is at this point that the term “development” is usually modified, either implicitly or explicitly, by the term “economic”. In fact, the term (and concept) “economic development” is at the center of all the multilateral development banks, of which the World Bank is the most prominent. For example, Article 1 of the Charter of the Asian Development Bank (discussed in Chapter Two) states that that bank’s purpose “shall be to foster economic growth and co-operation in the region of Asia and the Far East . . . and to contribute to the acceleration of the process of *economic development* of the developing member countries in the region, collectively and individually” [emphasis added].-

Just what sorts of processes and institutions does “economic development” encompass? Here are some examples: the training of enforcement officers in Nepal’s Ministry of Forestry; the provision of technical assistance in establishing rules and regulations for operation of a port facility in Surabaya (Indonesia’s second-largest city); the supply of computer hardware and software to run a telecommunications system in Bolivia; the drafting of a master plan for urban renewal in Kenya’s three or four biggest cities; the establishment of a new faculty for nurses’ training at a university in Kazakhstan, with library and research facilities; the carrying out of research into financial systems and policies best suited to regulating banks in Argentina; the training of judges working in commercial courts in Papua New Guinea; and the drafting of a new securities-regulations law in Albania.

In many cases, perhaps most cases, development projects combine both types of activity referred to above—that is, both the building of physical infrastructure and the creation or strengthening of processes and insti-

¹³ The charters that establish and govern all of the global economic organizations are reprinted as annexes to my earlier book, *THE FUTURE OF THE GLOBAL ECONOMIC ORGANIZATIONS: AN EVALUATION OF CRITICISMS LEVELED AT THE IMF, THE MULTILATERAL DEVELOPMENT BANKS, AND THE WTO* (2005). Most of those charters are also available through the Web sites of the various organizations themselves.

tutions involved in the efficient operation of economic activity. Hence a forestry development project in Nepal might involve the construction of a greenhouse nursery to grow eucalyptus tree seedlings, the building of roads in an area to be used for a forestry plantation, the provision of technical assistance to develop management systems for running the plantation, the establishment of a training center for persons operating the plantation facilities and for persons in the national Ministry of Forestry, the purchase and installation of computer and communication facilities, and the provision of microcredit to villagers in the area of the new forest plantation to facilitate their operation of small crop and livestock operations. Such a forestry development project might also involve elements of wider economic, financial, and legal policy reform—for example, putting in place

- (1) new government regulations prescribing fees to be charged for processing lumber; or
- (2) new requirements for arbitration of disputes between landowners and logging companies; or
- (3) new standards for handling questions of resettlement of communities displaced by the forestry plantation; or even
- (4) new financial standards applicable to the budgeting, accounting, and auditing procedures used by the country's forestry department.

In sum, “development” in this context encompasses an interference with the status quo in some geographic area that involves construction of physical infrastructure and/or the creation or strengthening of processes and institutions involved in the conduct of economic activity. It is worth noting that at least in modern society such development takes place all the time—sometimes very slowly, sometimes abruptly, sometimes interrupted by spasms of violence or natural disaster—and therefore the practical question to address is really not *whether* such development should take place, but rather *how* it should take place, including what the content, direction, and other features of that development should be.

2. Human Development

In recent years, the definition of “development” has broadened in the eyes of most persons involved in such work. Whereas before (as noted above) the term focused mainly or exclusively on economic aspects, the more modern view holds that the overall aim of the development process is to serve the complete well-being of people, not just their economic well-being.¹⁴ Hence the term “human development”, which often now appears

¹⁴ Among the most prominent proponents of this more modern view is Nobel laureate Amartya Sen, whose 1999 book *DEVELOPMENT AS FREEDOM* urges that development

in the literature relating to this type of activity. The gradual acceptance of the notion that “development” does not mean only “economic development” but instead encompasses other matters—these are sometimes referred to as “social development” or “community development”—represents a victory for those advocates who complained that in some circumstances economic improvement may come at the expense of social dislocation and human degradation.

In short, it’s not all about economics anymore. I worked for a number of years in the 1980s at the Asian Development Bank, headquartered in Manila. At the time, that institution had a blend of “old hands” and “modernists” (my terminology). The “old hands” were predominantly interested in aggregate economic improvement—often measured in terms of per capita income, as derived from gross national product (GNP) data—that might flow from a development project, and they would often downplay or overlook environmental damage or other consequences that were difficult to quantify, to evaluate, and to fit into their economic and financial rate-of-return calculations. By contrast, the “modernists” (I regarded myself as one of these) took a different view, pressing for a more comprehensive method of evaluating the overall costs and benefits, in *human* terms, of development projects that the Asian Development Bank was being asked to finance. (In Chapter Three, we shall examine in some detail how such financing takes place.)

The “modernist” view has clearly prevailed over the past two decades. Most persons and agencies involved in what they call “development” efforts now regard the true objective of such efforts to be the overall improvement of human beings’ lives rather than focusing more narrowly on per capita income or other exclusively economic factors.

3. *Liberal or Orthodox?*

Having established a meaning for “development”—now conceived in terms of “human development”—I turn to the first of the several modifiers in my phrase “an ideology of liberal, intelligent, participatory, multilateral, and sustainable human development”. I begin with a particularly controversial term: “liberal”.

should be seen “as a process of expanding the real freedoms that people enjoy”. More specifically, he asserts that “[d]evelopment consists of the removal of various types of unfreedoms that leave people with little choice and little opportunity of exercising their reasoned agency”. The five specific categories of freedoms on which Sen concentrates are: economic opportunities, political freedoms, social facilities, transparency guarantees, and protective security.

In using the term “liberal”, I dismiss the recent misuse of that term in American political rhetoric in recent decades, in which “liberal” and “leftist” are often smudged together. Instead, I use the term “liberal”, and the term “liberalism”, in the proper and technically more correct sense, as emerging out of the Enlightenment and then refined in the twentieth century. Here is the explanatory definition of “liberalism” offered by the *Britannica Concise Encyclopedia*:

Liberalism. Political and economic doctrine that emphasizes the rights and freedoms of the individual and the need to limit the powers of government. Liberalism originated as a defensive reaction to the horrors of the European wars of religion of the 16th century (see Thirty Years' War). Its basic ideas were given formal expression in works by Thomas Hobbes and John Locke, both of whom argued that the power of the sovereign is ultimately justified by the consent of the governed, given in a hypothetical social contract rather than by divine right (see divine kingship). *In the economic realm, liberals in the 19th century urged the end of state interference in the economic life of society.* Following Adam Smith, they argued that economic systems based on free markets are more efficient and generate more prosperity than those that are partly state-controlled. In response to the great inequalities of wealth and other social problems created by the Industrial Revolution in Europe and North America, *liberals in the late 19th and early 20th centuries advocated limited state intervention in the market and the creation of state funded social services, such as free public education and health insurance.* In the U.S. the New Deal program undertaken by Pres. Franklin D. Roosevelt typified modern liberalism in its vast expansion of the scope of governmental activities and its increased regulation of business. After World War II a further expansion of social welfare programs occurred in Britain, Scandinavia, and the U.S. *Economic stagnation beginning in the late 1970s led to a revival of classical liberal positions favouring free markets, especially among political conservatives in Britain and the U.S.* Contemporary liberalism remains committed to social reform, including reducing inequality and expanding individual rights. See also conservatism; individualism.¹⁵

Other definitions of “liberal” and “liberalism” emphasize matters of attitude and tolerance:

¹⁵ See *Britannica Concise Encyclopedia*, available (for this definition) at <http://www.answers.com/topic/liberalism> (last visited June 25, 2007). I have added the italicization to emphasize certain points below. In addition, I have intentionally retained the parenthetical references to other terms in order to benefit from the contextual guidance they offer.

- Not limited to or by established, traditional, orthodox, or authoritarian attitudes, views, or dogmas; free from bigotry.
- Favoring proposals for reform, open to new ideas for progress, and tolerant of the ideas and behavior of others; broad-minded.

We might consider briefly what the opposite of “liberal” is. An obvious antonym would be “illiberal”, but we need something more enlightening than that. Working from some of the above ideas, I would offer these possible labels and descriptions that run opposite to “liberalism”:

- orthodox (I have settled on this one in the heading for this subsection)
- authoritarian
- adhering to principles of rule by “divine right”
- favoring group rights over individual rights
- doctrinaire
- favoring the status quo

To this list could possibly be added the term “conservative”, although that term is used with as many variations of meaning as the term “liberal” is and would therefore need extensive description in order to be helpful in this context. It would at first glance appear to be insulting to offer some of the other labels for ideologies or tendencies that run counter to liberalism, but I will offer them anyway, along with a reminder that at many points in history these tendencies or qualities were viewed as entirely legitimate, natural, and even desirable (and still are today by some people):

- narrow-minded
- repressive
- intolerant
- unbending
- paternalistic
- bigoted

I also offer below another descriptive definition of “liberalism”, this one drawn from *Wikipedia* (a poor source for much research but probably instructive enough for these purposes). Note that this account, like the excerpt from the *Britannica Concise Encyclopedia* quoted above, focuses (in the third paragraph, as italicized) on how a modified version of the ideology of liberalism gained favor in the twentieth century. The “new liberals” adopting this modified version do call for some level of government regulation of economic activity in order to guard against market failures and to address serious social problems.

Liberalism refers to a broad array of related doctrines, ideologies, philosophical views, and political traditions which hold that individual liberty is the primary political value.

Liberalism has its roots in the Western Age of Enlightenment, but the term has taken on different meanings in different time periods.

Broadly speaking, liberalism emphasizes individual rights. It seeks a society characterized by freedom of thought for individuals, limitations on power (especially of government and religion), the rule of law, the free exchange of ideas, a market economy that supports free private enterprise, and a transparent system of government in which the rights of all citizens are protected. In modern society, liberals favor a liberal democracy with open and fair elections, where all citizens have equal rights by law and an equal opportunity to succeed. *Many new liberals advocate a greater degree of government interference in the free market, often in the form of anti-discrimination laws, universal education, and progressive taxation. This philosophy frequently extends to a belief that the government should provide for a degree of general welfare, including benefits for the unemployed, housing for the homeless, and medical care for the sick.* Such publicly-funded initiatives and interferences in the market are rejected by modern advocates of classical liberalism, which emphasizes free private enterprise, individual property rights and freedom of contract; *classical liberals hold that economic inequality, as arising naturally from competition in the free market, does not justify the violation of private property rights.*

Liberalism rejected many foundational assumptions which dominated most earlier theories of government, such as the Divine Right of Kings, hereditary status, and established religion. Fundamental human rights that all liberals support include the right to life, liberty, and property.

I am giving extended attention to the matter of defining “liberal” because the term is open to such varying interpretations. Even aside from the completely off-base rhetorical smudging-together of the terms “liberal” and “leftist” that some demagogues engage in, some such varying interpretations reflect a significant distinction between what I referred to above as “new liberals” and an older brand of liberals. Expressed more precisely, this distinction is between (1) “classical liberal economic theory” and (2) the more modern form of liberalism that surfaced in the twentieth century.

This distinction is important and warrants close scrutiny. The first form of liberalism—that is, “classical liberal economic theory” (also called “economic liberalism” or sometimes “neoliberalism” in referring to the renewed interest in it over the past quarter-century)—calls for virtually no government interference in economic affairs. The second form of liberalism does permit, and in fact demands, a prudent regulatory role for government in economic activity on grounds that an unregulated market can do great harm to a country’s economy and society, as for example if that market lacks adequate rules and procedures for stopping fraudulent activity—particularly in sectors of the economy (for example, banking) in which the risk of contagion is especially high. In addition, the second, more modern form of liberalism supports the creation of state-funded social services, such as free public education and basic health services and insurance, on grounds that the benefits to society of providing such services are far greater than the cost of doing so, and also that the “wealth gap” between the rich and the poor in society can, if it becomes too great, fuel class conflict or even revolution.

I offer one final descriptive definition of “liberalism”, this one from the Columbia University Press. It provides even further information on the distinction between the early nineteenth century version of the ideology and the more modern version.

[L]iberalism[:] [P]hilosophy or movement that has as its aim the development of individual freedom. Because the concepts of liberty or freedom change in different historical periods the specific programs of liberalism also change. The final aim of liberalism, however, remains fixed, as does its characteristic belief not only in essential human goodness but also in human rationality. Liberalism assumes that people, having a rational intellect, have the ability to recognize problems and solve them and thus can achieve systematic improvement in the human condition. Often opposed to liberalism is the doctrine of conservatism, which, simply stated, supports the maintenance of the status quo. Liberalism, which seeks what it considers to be improvement or progress, necessarily desires to change the existing order.

Origins. Neither individualism nor the belief that freedom is a primary political good are immutable laws of history. Only in the Western world in the last several centuries have they assumed such importance as social factors that they could be blended into a political creed. Although Christianity had long taught the worth of the individual soul and the Renaissance had placed a value upon individualism in limited circles, it was not until the Reformation

that the importance of independent individual thought and action were expressed in the teachings of Protestantism. At the same time, centralizing monarchs were destroying feudalism and alongside the nobility arose the bourgeoisie, a new social class that demanded the right to function in society, especially commercially, without restriction. This process took several centuries, and it may be said that the first philosopher to offer a complete liberal doctrine of individual freedom was the Englishman John Locke (1689). From this period on the doctrines of classical liberalism were evolved.

Classical Liberalism. Classical liberalism stressed not only human rationality but the importance of individual property rights, natural rights, the need for constitutional limitations on government, and, especially, freedom of the individual from any kind of external restraint. Classical liberalism drew upon the ideals of the Enlightenment and the doctrines of liberty supported in the American and French revolutions. The Enlightenment, also known as the Age of Reason, was characterized by a belief in the perfection of the natural order and a belief that natural laws should govern society. Logically it was reasoned that if the natural order produces perfection, then society should operate freely without interference from government. The writings of such men as Adam Smith, David Ricardo, Jeremy Bentham, and John Stuart Mill mark the height of such thinking.

In Great Britain and the United States the classic liberal program, including the principles of representative government, the protection of civil liberties, and laissez-faire economics, had been more or less effected by the mid-19th cent. The growth of industrial society, however, soon produced great inequalities in wealth and power, which led many persons, especially workers, to question the liberal creed. It was in reaction to the failure of liberalism to provide a good life for everyone that workers' movements and Marxism arose. Because liberalism is concerned with liberating the individual, however, its doctrines changed with the change in historical realities.

Liberalism in the Twentieth Century. By 1900, L. T. Hobhouse and T. H. Green began to look to the state to prevent oppression and to advance the welfare of all individuals. Liberal thought was soon stating that the government should be responsible for providing the minimum conditions necessary for decent individual existence. In the early 20th cent. in Great Britain and France and later in the

United States, the welfare state came into existence, and social reform became an accepted governmental role.

In the United States, minimum wage laws, progressive taxation, and social security programs were all instituted, many initially by the New Deal, and today remain an integral part of modern democratic government. While such programs are also advocated by socialism, liberalism does not support the socialist goal of complete equality imposed by state control, and because it is still dedicated to the primacy of the individual, liberalism also strongly opposes communism. Current liberal goals in the United States include integration of the races, sexual equality, and the eradication of poverty.¹⁶

It is the more modern, twentieth-century form of liberalism that I refer to in speaking of “liberal human development”. Applied in the context of global development, then, such “liberalism” has numerous important elements. It (1) emphasizes human freedom, (2) is dedicated to the primacy of the individual (as opposed to the group), (3) is based on a belief in essential human goodness and in human rationality, (4) rejects governmental paternalism, and (5) takes the view that there is a clear need to limit the powers of government and to allow freedom of economic activity as carried out in free markets—but it also (6) demands that government regulation be put in place in order to correct harmful deficiencies that can occur in supposedly free markets and to facilitate the provision of certain basic needs of the society, including public education and health care. This liberal ideology (7) favors proposals for reform, (8) is open to new ideas for progress, (9) rejects doctrinaire orthodoxy, and (10) is tolerant of the ideas and behavior of others. It (11) demands that society be governed by the rule of law and (12) insists that the law should prohibit discrimination on the basis of race, gender, and other inappropriate grounds.

That is a heavy load for “liberalism” to carry. That is why I have spent this much time explaining the term as used in this context.

There is one important aspect of “liberalism” that I have not touched on in this discussion of the term. Of central importance to international economic relations is the ideology of *trade* liberalization—that is, of “liberalism” as applied to the trade relations that exist between and among countries in the world. I have intentionally omitted that subject from the discussion offered above, for two reasons. First, the definition of “liberal”

¹⁶ See *Columbia Electronic Encyclopedia* (6th ed.), available (for this definition) at <http://www.answers.com/topic/liberalism> (last visited June 25, 2007).

(and of “liberalism”) that I have developed in the preceding paragraphs is general in nature; the policy or philosophy of *trade* liberalization is more detailed and derivative—and more complicated. Indeed, we could view the general notion of “liberalism” as leading both toward and away from a policy of trade liberalization, depending on what factors are emphasized: on the one hand, liberalism’s preference for free markets unencumbered by government interference would suggest that restrictions placed by national governments on imports and exports are bad; but on the other hand, liberalism’s rejection of government interference would also augur against allowing any sort of *international* government authorities telling national government authorities what to do or what not to do regarding trade regulation. So, at least at first glance, liberalism does not necessarily favor an international regime of controls requiring trade liberalization.

There is a second, and more pragmatic, reason why the above discussion on “liberal” and “liberalism” (as a component to an ideology of development) does not include any detailed discussion of trade liberalization: later chapters in this book deal with that issue comprehensively. Chapter Three, below, explains why the 1940s brought broad support for trade liberalization,¹⁷ and portions of other chapters discuss the specific criticisms regarding trade liberalization as that policy plays out in the global economic institutions. As we shall see there, trade law and trade policy—and the operations of the WTO in facilitating the operation of the score of treaties that emerged about fifteen years ago—have a direct impact on development. But let us postpone our further discussion of trade liberalization until those later chapters.

4. *Intelligent or Ill-Conceived?*

An ideology of “liberal human development”, using the meanings I have ascribed to those terms above, is useless if it is not carried out intelligently. Indeed, as we shall see below (starting in Chapter Three), one of the pervasive criticisms of the work of the World Bank and the IMF is that their projects and programs are simply not smart—that they are ill-conceived and that this shortcoming should have been evident from the beginning. Good development is smart development.

To illustrate the opposite of smart development, let us consider the extreme—one might say startling—example of the PRC’s Great Leap

¹⁷ In various portions of this book, I shall use the short-hand term “free trade” in lieu of the more precise phrases “trade liberalization” or “a liberalized trade regime”. All of these are meant to be synonymous, signifying policies that encourage trading of goods and services across national borders by lowering tariffs and other protectionist practices.

Forward program in the late 1950s under Mao Zedong. Here is one account of the disastrous foolishness of that program:

[Among other initiatives, the] Great Leap Forward . . . encouraged communes to set up “back-yard” production plants. The most famous were 600,000 backyard furnaces which produced steel for the communes. When all of these furnaces were working, they added a considerable amount of steel to China’s annual total—11 million tonnes. . . .

Mao had introduced the Great Leap Forward with the phrase “it is possible to accomplish any task whatsoever”. By the end of 1958, it seemed as if his claim was true.

However, in 1959, things started to go wrong. Political decisions/beliefs took precedence over common sense and communes faced the task of doing things which they were incapable of achieving. Party officials would order the impossible and commune leaders, who knew what their commune was capable of doing or not, could be charged with being a “bourgeois reactionary” if [they] complained. Such a charge would lead to prison.

Quickly-produced farm machinery produced in factories fell to pieces when used. Many thousands of workers were injured after working long hours and falling asleep at their jobs. Steel produced by the backyard furnaces was frequently too weak to be of any use and could not be used in construction—it’s [*sic*] original purpose. Buildings constructed by this substandard steel did not last long.

Also the backyard production method had taken many workers away from their fields—so desperately needed food was not being harvested. Ironically, one of the key factors in food production in China was the weather, and 1958 had particularly good weather for growing food. Party leaders claimed that the harvest for 1958 was a record 260 million tons—which was not true.

The excellent growing weather of 1958 was followed by a very poor growing year in 1959. Some parts of China were hit by floods. In other growing areas, drought was a major problem. The harvest for 1959 was 170 million tons of grain—well below what China needed at the most basic level. In parts of China, starvation occurred.

1960 had even worse weather than 1959. The harvest of 1960 was 144 million tons. 9 million people are thought to have starved

to death in 1960 alone; many millions were left desperately ill as a result of a lack of food. The government had to introduce rationing. This put people on the most minimal of food and between 1959 and 1962, it is thought that 20 million people died of starvation or diseases related to starvation.¹⁸

Although this is an extreme example in terms of how much damage was done, Mao's Great Leap Forward program illustrates a general principle: development must be conducted in a careful, rational, intelligent, competent manner; development plans and projects that are ill-conceived or poorly implemented can do much more harm than good. Unfortunately, some proponents and financiers of development, particularly in the economically less developed countries, have little or no incentive to pay attention to this principle. The ideology of liberal human development that is under attack in the Global Development War encompasses the requirement that such development be intelligent in its conception and its implementation.¹⁹

5. *Participatory or Authoritarian?*

Another issue at play in the Global Development War revolves around whether development is to be participatory or authoritarian in nature. As noted above, a liberal ideology generally disfavors government interference in economic activity. On the other hand, the twentieth-century version of liberalism that emerged out of the industrial revolution and the Great Depression acknowledged the need for government regulation to avoid fraud and abuse that could create far-reaching damage to the economic and social system. Moreover, as noted immediately above, development plans and programs can, if not formulated and carried out intelligently, prove counterproductive or even disastrous. In this jumble of competing factors, should development planning be left to the discretion of host-country governments? Should such development planning be conducted by professionals? Should it be participated in by the intended beneficiaries?

The answers—or I should say the best answers—that have emerged to these questions in recent years are no, yes, and yes, respectively. For reasons

¹⁸ This account, similar to many others, was drawn from “History Learning Site”. See http://www.historylearningsite.co.uk/great_leap_forward.htm (last visited June 25, 2007).

¹⁹ As is emphasized in some recent publications, the responsibility for making development intelligent in its conception and implementation falls not only on the residents and authorities of the area or state targeted for development but also on those outsiders who are providing financial support for such development. See, e.g., Sanjeev Gupta, Catherine Pattillo, and Smita Wagh, *Aid Effectiveness: What Can Donors Do?*, appearing in 35 IMF SURVEY 138–139 (May 15, 2006).

that will be explained in Chapter Three, the World Bank and (to some extent) the IMF have recently (1) moved away from an ideology of development under which total or predominant discretion over the course of development in a country is left to that country's government and (2) moved toward an ideology under which intended beneficiaries of a proposed development program or project—that is, the farmers or the school-children or the private-sector business owners or the water-users in a rural area—must have an effective voice in considering the proposal and implementing it and (3) increased the role of professionals, especially NGOs, in development. Some of these initiatives have been strongly resisted from the beginning, and all of these initiatives are under attack today.

6. *Multilateral, Bilateral, or Regional?*

Another ideological conflict in the Global Development War revolves around whether development efforts should be undertaken in a multilateral manner—that is, through the enlistment and cooperation of most countries in the world—or in a narrow manner, either bilaterally or regionally. As will be explored more fully in Chapter Three, the approach adopted in the immediate aftermath of World War II was multilateral in character. In the area of trade policy, for example, the General Agreement on Tariffs and Trade (and its aborted institutional companion, the International Trade Organization) anticipated worldwide participation. So did the IMF and the World Bank, as well as in the UN. The commitment to multilateral solutions has faded, especially in the USA, in the decades that have now passed since that time. It was a surprise to many observers, for example, that the Uruguay Round of trade negotiations could finally be brought to a successful conclusion in late 1993, after over seven years of negotiations. Yet even this seemingly robust reaffirmation of a multilateral approach to trade policy has had little staying power—as evidenced by the breakdown of the follow-up Doha Round of trade negotiations over the last couple of years.

In the place of multilateralism has arisen bilateralism and regionalism. This has been especially prominent in the case of the Bush-Cheney administration, which has pressed very vigorously to negotiate bilateral investment treaties and bilateral “free-trade” agreements with numerous countries. Other countries, both in this hemisphere and elsewhere, have followed suit, giving much more attention to regional trade arrangements and bilateral agreements than to multilateral negotiations. (This is a topic I shall return to in section IV of Chapter Six.)

Specifically in terms of development, bilateralism has also been chipping away at multilateralism. The ratio of (1) worldwide bilateral development assistance (that is, development financing provided by government

agencies in individual countries directly to the governments of other countries for development purposes) to (2) multilateral development assistance is now higher than anytime in the last fifteen years, as shown in Table 1.1.

Year	Bilateral	Multilateral	Ratio of Bilateral to Multilateral
1990	43,695	15,745	2.78 to 1
1995	35,158	18,043	1.95 to 1
2000	34,304	15,844	2.17 to 1
2005	69,675	20,167	3.45 to 1

Notes:

- Amounts are in 2005 US\$ millions
- “Bilateral” includes all grants and loans coming from all donor countries’ national bilateral development agencies, such as the US Agency for International Development.
- “Multilateral” includes all World Bank and IMF lending plus lending by regional multilateral development banks.
- Source: OECD (2007), International Development Statistics Online, Development Assistance Committee, Paris.

7. Sustainable or Improvident?

The Global Development War also involves battles over the long-term prudence and sustainability of the development efforts to be undertaken. The term “sustainable development” has now gained favor among most people in the official development community. (Some embrace the notion of sustainability more than others, of course, but practically everyone will at least use the term.) The term emerged in large part from the environmental protection movement as it matured in the 1980s. A milestone in that regard was the publication in 1987 of the so-called Brundtland Report (named after Gro Brundtland, former prime minister of Norway who served as chair of the World Commission on Environment and Development). That report, appearing in the form of the book *Our Common Future*, served as a clarion call for environmentalists and a wake-up call for governments. It is often quoted for its definition (at page 43) of “sustainable development” as “development that meets the needs of the present without compromising the ability of future generations to meet their own needs”.

In the heading to this subsection, I have used the term “improvident” to connote the opposite of “sustainable”. I considered other terms for this purpose, including “profligate”, “prodigal”, “imprudent”, “short-sighted”, and “non-husbanding” (yes, that is awkward). I settled on “improvident” because that term seems to capture best the meaning I wish to convey. That meaning (drawing from several dictionary definitions of the term “improvident”) encompasses the following elements: not providing for the future; not given to careful consideration; tending to squander and waste rather than to preserve and husband; the opposite of provident, which means “providing carefully for the future”. Some examples given in various dictionary definitions are these: “wild squirrels are provident” (presumably because they gather nuts for the winter); “a provident father plans for his children’s education” (what’s the mother doing, knitting?).

Improvident development efforts are those that do not provide carefully for the future. More precisely—in the context of the contemporary world that grows increasingly more populated and hence increasingly more resource-challenged—improvident development efforts are those that do not pay unequivocally overriding attention to environmental protection and resource conservation (including conservation of cultural resources such as language, sacred lands, and World Heritage Sites). As will be discussed in Chapter Three, the global economic organizations have placed gradually increasing emphasis on environmental protection—but questions still remain as to whether they have done enough in that regard. Those questions, and the more general issue of sustainability versus improvidence in development, represent an important ideological battle in the Global Development War.

8. *Summary*

As the foregoing discussions suggest, there are numerous ideological chords and rhythms at work—and competing against each other—in contemporary development initiatives around the world. Many of those chords are dissonant; many of the rhythms are jarring. I have tried to identify several of these and to develop my thesis that we have now reached a stage in global development at which some of the competing ideological chords and rhythms will predominate and drown out the others. In its simplest terms, the Global Development War may be seen as a war over the developmental ideology that is to be adopted and followed in the coming years, and particularly over the question of whether to accept or reject what I have described above as an ideology of liberal, intelligent, participatory, multilateral, and sustainable human development.

B. Why the War Matters

In case it is not obvious, we should take a moment to consider why the Global Development War matters. It might seem to farmers in Normandy and Nebraska, or office workers in New York and New Delhi, or government civil servants in Tokyo and Teheran, that the planning and implementation of development projects, the adoption of international trade and finance policies, and the management of the world economy more generally, are proceeding (whether well or poorly) along a track that will gradually “work itself out”—and that in any event there is no significant role to be played in these matters by individuals outside the official development community or the halls of power. Particularly in countries that have high per capita incomes, with transportation systems and power distribution systems and health care systems and school systems and legal systems that work tolerably well, the average person might easily regard the business of development with a shrug. He or she might take the attitude that as long as some emergency relief efforts are made, largely with private contributions and volunteers, to respond to tsunamis and Darfur-type humanitarian crises, and as long as terrorist attacks or economic chaos can be largely prevented or effectively mitigated, then concerns over longer-term global development efforts—and particularly concerns over the ideological foundations for such efforts—are really unnecessary.

In the following paragraphs, I shall try to offer a different view by illustrating how development issues can and should be seen as inextricably linked to the well-being of the average person, whether in a rich country or in a poor country. By “well-being” I mean to include that person’s job, comfort, future, and protection from disease and violence.

1. *Despair, Danger, and Development*

Let us assume the existence of three hypothetical persons. Citizen Cynthia lives in Cincinnati, a mid-sized city in Ohio; Farmer Feridun lives in Faruba, a small village in the hypothetical central Eurasian country of Azbadistan. Subsistence Samuel lives in Serengori, a cluster of huts in the mid-section of sub-Saharan Africa.

Citizen Cynthia works in Parkdale High School, where her two children were students some years ago. Both of those children are now married, and Cynthia and her husband, who was forced into retirement four years ago when a tire manufacturing plant in Cincinnati was closed, enjoy the one grandchild they have (so far). They often babysit for that grandchild in their three-bedroom house that they bought in 1993 for \$134,000 in a suburban neighborhood where similar houses are now selling for

\$280,000. Their house has a water softener, a small deck that needs power-washing and resealing, a two-car garage, a moist basement, wall-to-wall carpeting, and two televisions. Cynthia watches Fox News fairly regularly and occasionally tunes in to the local PBS television station for *The News Hour with Jim Lehrer*. From these sources, and occasionally from the headlines on the Internet, Cynthia has some exposure to international news stories. Her conversations with friends—both at Parkdale High School and at the Mustard Seed Bible Church, which she attends on Sundays and Wednesdays—touch only lightly on those news stories, focusing instead on family matters and the ongoing local zoning dispute over the building of government-subsidized low-income housing on undeveloped land half a mile from Cynthia's neighborhood. Cynthia was born on March 8, 1953.

Farmer Feridun also was born on March 8, 1953. Feridun shares a twenty-hectare plot of land²⁰ with two brothers, with whom he also shares the effort each year of planting and harvesting a crop of wheat, most of which they sell to others in the village. In earlier years, Feridun's wife and two children all helped with the farm work, especially at harvest time, when the grain has to be urged from the husks and then laid out on the road to dry before being placed in storage granaries in Faruba, the village where Feridun and two or three generations of his ancestors have lived through the decades. Now Feridun's children are married, and Feridun and his wife have one grandchild and are expecting more. Feridun also has two other lines of work—as a driver for the local branch of the Bank of Azbadistan (the country's central bank) and occasionally as a day laborer with the local office of the national government's Ministry of Forest Resources. Feridun and his wife live in a frame house under a corrugated steel roof with no gutters. The floor of the house is part wood and part dirt, and the two small glass windows in the house are smoky from the flue-less cookstove. Feridun and his wife share the house, which has a water pump in one corner, with two of Feridun's neices—daughters of Feridun's sister, who died last year and whose husband left long ago, purportedly to work in Saudi oilfields. Next to the house is a small shop that Feridun's wife operates with her sister, selling soft drinks, snacks, soap, candies, cigarettes, and other sundries. The shop has a television that attracts a few people during the day and a dozen or so people at night. Most of the programming consists of old American sit-com shows and rebroadcasts from the Al Jazeera network. When Feridun goes to the nearby mosque, he occasionally discusses with his friends the stories he hears on Al Jazeera.

Subsistence Samuel also was born on March 8, 1953, and is regarded as a rather old man in his clan. He is a respected leader in that clan, some-

²⁰ Twenty hectares would equal about fifty acres in English units and about 300 *m²* in Chinese units.

times filling the role of *laibon* (religious leader) in the traditional beliefs of his people. Those beliefs circulate around cattle, as has much of Samuel's life. He and his extended family, along with a few other families that comprise their clan, look after a small herd of cattle from which they eke out a subsistence. Their village of Serengori, whose location moves from time to time depending on grazing circumstances for their herd, consists mainly of a variety of mud huts and more weather-worthy buildings of wood, plastic sheeting, and miscellaneous metal pieces. There is some electrical service to the current location of the village, as well as a primitive school where a government-supplied teacher sometimes comes for a month at a time. Modern health care is spotty, and Samuel's wife died several years ago from a combination of old age and an unknown disease. She was preceded in death by two of their five children, who over the years had supplied Samuel with his sixteen grandchildren, ten of whom are still alive. At least one of Samuel's remaining children, and at least three of his remaining grandchildren, are HIV-positive, as are about a quarter of the other residents in the village. AIDS and other diseases have reduced the ability of men in the village to earn outside income by working as unskilled laborers at one of the nearby game preserves. Samuel has relatively little contact with the outside world, but he is aware of the displacement of thousands of people in a neighboring country because of inter-tribal conflict. Some of the persons caught up in the displacement (Samuel knows the word "genocide") have managed to escape the violence and to travel to a refugee camp some thirty kilometers north of Samuel's village.

It would be easy for us to characterize Cynthia as being a part of the "developed" world (variously referred to also as the "industrialized" world or, less commonly, the "First World") and to characterize Feridun and Samuel as being part of the "less developed world" (variously referred to as the "Third World" or, with perhaps inflated optimism, the "developing world"). For now, let us set aside that two-part classification and instead place Cynthia, Feridun, and Samuel in a slightly more sophisticated three-part classification suggested by Robert Wade in a recent *Foreign Affairs* article:

In thinking about these issues [of international economic development], we should . . . give up talk of "the developing world" in contrast to "the developed world," and talk instead of a "1:3:2 world" (one billion people live in the rich countries, three billion live in countries where growth rates are faster than those of the rich countries, and two billion live in countries where they are substantially slower).²¹

²¹ Robert H. Wade, *Questions of Fairness: In Search of a Just International Economic Order*, 85 FOREIGN AFFAIRS, Sept.–Oct. 2006, at 136, 143 (reviewing Ethan B. Kapstein, ECONOMIC JUSTICE IN AN UNFAIR WORLD: TOWARD A LEVEL PLAYING FIELD).

Expressing Wade's three-part classification somewhat differently, we could say that the world is divided into

- (1) the "top-sixth" countries that are rich (as measured, say, by per capita GNP or by other indices of material wealth);
- (2) the "middle-half" countries that are not rich but that are on the rise (if only modestly) in economic terms; and
- (3) the "bottom third" countries that are poor and that show little or no prospects for improvement.

This third category would correspond roughly to the set of countries whose people almost all live on less than \$1 per day. As is widely reported, about 1.3 billion people in the world (out of a total of about 6.6 billion) live on less than \$1 per day²²—and most of those, of course, are concentrated in countries whose overall per capita income and economic growth rates are lowest.

Cynthia lives in a rich country, a "top-sixth" country, and we can tell from the brief description given above that she has a higher standard of living, at least if measured in material and economic terms, than either Feridun or Samuel does. We shall return to Cynthia shortly, but first let us explore Feridun's circumstances more closely. He lives in the hypothetical country of Azbadistan somewhere in central Eurasia. Let us stipulate that Azbadistan has economic circumstances similar to those of the countries listed in Table 1.2. Some of these are "bottom third" countries, and others sit near the bottom of the world's "middle half" countries.

As we might expect from looking at these data, life is not easy for Feridun. He has few resources to apply toward some of the most likely goals he might have in mind—to purchase materials with which to improve his house, to get training in new skills that could lead to higher-income employment for himself, to get medical attention for his wife, children, or grandchild(ren) in case of serious illness that could occur at any time, to start a small business, to gain an elected or appointed government position, or to purchase such luxuries as a clothes-washer or refrigerator. When he does manage to earn and save some money, there often is pressure from a relative to loan or give money in order to deal with a family emergency. When he sees American television shows, Feridun learns of an opulence that seems beyond his own dreams and yet taken for granted by the characters in the shows, whom he supposes reflect American culture. And when

²² For an avalanche of sources citing this figure, and providing innumerable related details, just run a Google search for "less than \$1 per day" or for "less than \$2 per day". It is widely reported that over half the world's people live on less than \$2 per day.

Table 1.2
Standard-of-Living Information for Ten Selected Countries in the Same
General Region as Azbadistan

Country	Per Capita GDP (US\$)	Per Capita GDP (PPP in US\$)	Annual Growth Rate ¹	Human Development Index ²	Life Expectancy at Birth (years)	Access to Clean Water ³	Per Capita Health Expenditure ⁴	Adult Literacy ⁵
Tajikistan	322	1,202	-4.8	.652	63.7	59	71	99.5
Nepal	252	1,490	2.1	.527	62.1	90	64	48.6
Afghanistan	*	*	*	*	46	39	*	28.1
Bangladesh	406	1,870	2.5	.530	63.3	74	68	43.1
Uzbekistan	456	1,869	1.3	.696	66.6	82	159	99.3
Kyrgyzstan	433	1,935	-1.3	.705	67.1	77	161	98.7
Pakistan	632	2,225	1.6	.539	63.4	91	48	49.9
Georgia	1,151	2,844	-1.0	.743	70.6	82	174	100.0
Syria	1,293	3,610	1.5	.716	73.6	93	116	79.6
Armenia	1,017	4,101	2.7	.768	71.6	92	302	99.4

* Data not available.
¹ Percentage change in GDP, 1990–2004.
² 2004 values, as reported under the UN Human Development Report 2006.
³ Percentage of population with sustainable access to an improved water source, 2004.
⁴ 2003 values in PPP US\$, as reported under the UN Human Development Report 2006.
⁵ Percentage of population, age 15 and over.

he sees Al Jazeera reports of US troops invading a nearby Muslim country on what appear to be religious and economic grounds, Feridun gets quite angry.

Meanwhile, Samuel, in the mid-section of Africa, has little time or energy for anger. Like others in his village, and in other villages across the region, he has a life of intense uncertainty and deprivation. There is no reasonable prospect that he or his children can escape the tedious downward path that he follows, fueled by poor education and poor healthcare. Here are the economic circumstances that exist in nearby countries in Samuel's region of the world:

Table 1.3
Standard-of-Living Information for Ten Selected Countries in the
Mid-Section of Africa

Country	Per Capita GDP (US\$)	Per Capita GDP (PPP in US\$)	Annual Growth Rate ¹	Human Development Index ²	Life Expectancy at Birth (years)	Access to Clean Water ³	Per Capita Health Expenditure ⁴	Adult Literacy ⁵
Kenya	481	1,140	-0.6	.491	47.5	61	65	73.6
Tanzania	288	674	1.1	.430	45.9	62	29	69.4
Congo, Dem. Rep. of	119	705	-6.0	.391	43.5	46	14	67.2
Burundi	90	677	-0.1	.378	45.6	*	*	59.3
Central African Republic	328	1,094	-0.6	.353	39.1	75	47	48.6
Chad	447	2,090	2.1	.368	43.7	42	5 1	25.7
Uganda	245	1,478	3.5	.502	48.4	60	75	66.8
Ethiopia	114	756	1.5	.371	47.8	22	20	42.7
Nigeria	560	1,154	0.8	.448	43.4	48	51	68.0
Niger	228	779	-0.7	.311	44.6	46	30	28.7

* Data not available.
¹ Percentage change in GDP, 1990–2004, or in some cases 1994–2004.
² 2004 values, as reported under the UN Human Development Report 2006.
³ Percentage of population with sustainable access to an improved water source, 2004.
⁴ 2003 values in PPP US\$, as reported under the UN Human Development Report 2006.
⁵ Percentage of population, age 15 and over.

The data in Tables 1.2 and 1.3 are grim, especially compared with the corresponding data that apply to the USA, where Citizen Cynthia sits somewhere in the middle of the economy. Table 1.4 shows the corresponding standard-of-living indices for Cynthia's country, as well as for nine other countries that are among the richest in the world.

If she were to study these figures, Cynthia would surely be relieved to live in Cincinnati. Indeed, she probably sees enough on Fox News and PBS

Table 1.4
Standard-of-Living Information for Ten Selected Rich Countries

Country	Per Capita GDP (US\$)	Per Capita GDP (PPP in US\$)	Annual Growth Rate ¹	Human Development Index ²	Life Expectancy at Birth (years)	Access to Clean Water ³	Per Capita Health Expenditure ⁴	Adult Literacy ⁵
USA	39,883	39,676	1.9	.948	77.5	100	5,711	99.0
UK	35,485	30,821	2.2	.940	78.5	100	2,389	99.0
France	33,896	29,300	1.7	.942	79.6	100	2,902	99.0
Germany	33,212	28,303	1.5	.932	78.9	100	3,001	99.0
Japan	36,182	29,251	0.8	.949	82.2	100	2,244	99.0
Italy	29,143	28,180	1.3	.940	80.2	*	2,266	98.4
Canada	30,586	31,263	2.1	.950	80.2	100	2,989	99.0
Sweden	38,525	29,541	1.8	.951	80.3	100	2,704	99.0
Australia	31,690	30,331	2.5	.957	80.5	100	2,874	99.0
Singapore	25,191	28,077	3.8	.916	78.9	100	1,156	92.5
<p>* Data not available.</p> <p>¹ Percentage change in GDP, 1990–2004.</p> <p>² 2004 values, as reported under the UN Human Development Report 2006.</p> <p>³ Percentage of population with sustainable access to an improved water source, 2004.</p> <p>⁴ 2003 values in PPP US\$, as reported under the UN Human Development Report 2006.</p> <p>⁵ Percentage of population, age 15 and over.</p>								

to realize that terrible living conditions—disease, war, deprivation—exist in some parts of Africa; her Mustard Seed church probably takes up collections to help relieve the misery there, as well as in tsunami-torn southeast Asia, earthquake-battered Pakistan, and other regions of the world. Things are better in Cincinnati.

But Cynthia does have concerns and frustrations about her own family's economic circumstances as well. Her husband lost his job, after all, because of a plant closing that was widely attributed to the company's decision to move its manufacturing operations overseas, a part of the "outsourcing" phenomenon that has led to many plant closings in the "Rust Belt" of the country. She senses that the career opportunities for her chil-

dren and grandchild(ren) might be limited by similar aspects of “globalization”. Indeed, several of the industries that employed her friends and neighbors in earlier years have also caught the “outsourcing” bug and contributed to the flood of imports that have driven the US trade deficit sky high. She hears that this is especially true in respect of the PRC, which (she is told) consistently violates US trade laws by copying US products and selling them cheap and even by manipulating the value of its national currency in ways that (she is told) unfairly benefit Chinese products and businesses. She is told also that the US government seems powerless to enforce those trade laws because of faceless bureaucrats in the World Trade Organization based somewhere in Europe.

Moreover, while Cynthia chafes at the prospect of having government-subsidized low-income housing built close to her own neighborhood (putting downward pressure, she predicts, on property values there), she is quite well aware that there are many people in her own country, and her own city, suffering terrible poverty and despair. These people, she believes, should be helped before Americans’ tax dollars are sent overseas to strangers—especially if, as she hears in the news, those tax dollars are often wasted through mismanagement or corruption. With Bill and Melinda Gates, and now Warren Buffet, directing large chunks of their fortunes toward fighting poverty and disease overseas, Cynthia thinks, surely the enormous financial generosity that the US government has shown over the years can be trimmed back some and directed to “America first”.

In short, Cynthia has reasons, based on information available to her, to adopt a dim view of “excessive” US government financial involvement in international development work, of multilateral efforts at trade liberalization, and of getting mixed up with global economic organizations generally. She is suspicious of, or downright hostile toward, the whole phenomenon of “globalization” because she sees it as bringing bad things to her country and to her family.

I want to speak to Cynthia. More importantly, I want somebody *else* to speak to Cynthia—somebody to whom Cynthia is likely to listen carefully. I want somebody to persuade Cynthia that (to use the same phrase I used a few pages ago) “development issues can and should be seen as inextricably linked to the well-being of the average person, whether in a rich country or in a poor country”, because such development issues bear directly on “that person’s job, comfort, future, and protection from disease and violence”.

Perhaps Cynthia could consider the following facts:

- *Mayhem and chaos.* In many countries, especially in Africa, the combination of disease and sectarian violence has left a gen-

eration of people unable to function normally. Beginning in 2003 and intensifying in 2005, fighters in the Janjawid, a militant group discreetly funded and supported by the Sudanese government, have attacked and systematically displaced a diverse range of ethnic groups in Chad and Sudan, particularly in the infamous Darfur region.²³ Approximately 2 million people have been forcibly displaced, and thousands have died. The Janjawid fighters have driven approximately 50,000 to 75,000 innocent civilians from their homes and villages, killed many others, and then stolen many cattle, the main source of wealth in the region. Given the rampant violence, victims have virtually no access to humanitarian assistance. Unsurprisingly, some have taken matters into their own hands, acquiring modern weapons to defend themselves—but, in the process, escalating the violence at an exponential rate.

- *Guns.* As exemplified by the situation in Darfur, weaponry is no longer monopolized by national governments. Instead, all kinds of groups, sects, clans, and cells can and do have firepower adequate to bring injury of enormous scale to individuals and countries.²⁴ There are approximately 639 million small arms in the world today, produced by more than 1,135 companies in at least ninety-eight countries; almost 60 percent are in civilian hands, and 8 million new weapons are produced every year. At least 16 billion units of military ammunition were produced in 2001 alone—more than two bullets for every man, woman, and child in the world. The international trade of authorized exports of arms is relatively small in global terms, amounting to around US\$21 billion per year and only half of 1 percent of total world trade. However, shamefully, the permanent members of the UN Security Council—that is, the USA, the UK, the Russian Federation, China, and France—were the top five arms exporters in the world in 2001, accounting for 88 percent of the international trade of authorized exports of arms. The USA alone contributed half—almost 45 percent of the world's total arms trade. Where did these arms go? While they may initially be sold to authorized entities, such as state and local governments and municipalities, many of them eventually end up in the hands of private individuals in

²³ Most of the information here is drawn from Amnesty International documents, especially at <http://web.amnesty.org/library/index/ENGAFR200062006> (last visited July 20, 2007).

²⁴ Most of the facts summarized here are drawn from <http://www.controlarms.org> (last visited July 20, 2007).

the less developed, politically unstable Third World countries in Africa, South America, Southeast Asia, and the Middle East. For example, in 2001, as part of the US government's "war on terror", the USA offered the Philippine government military equipment worth more than US\$100 million to fight various armed groups. Unfortunately, much of the equipment ended up in the hands of criminal and armed political groups. In Mindanao, where revolvers sold for US\$15 and machine guns for US\$375, more than 70 percent of the population owned one or more guns. Almost 82 percent of homicides there involved small arms.

- *Farm despair.* Besides political and social instability, in the past few years, the economies of certain of the poorest countries have been particularly hard hit. These include Burkina Faso, whose cotton sector has been devastated by changes in world prices, allegedly because of subsidies provided by the US government to large US cotton-producing businesses.²⁵ In December 2006, a cotton-buying company representative met with local farmers to inform them that they would receive US\$0.30 a kilo for their next harvest, or 9 percent less than they got for the previous year. The cotton industry accounts for 60 percent of Burkina Faso's cash exports and provides income to more than a quarter of its 13 million people. The cause of the low cotton prices can be attributed to the US government, which heavily subsidizes 25,000 of its cotton farmers and paid US\$ 4.2 billion in farm subsidies in 2004–2005. As a result, sub-Saharan countries lost around US\$ 400 million in revenue, which could have benefited some 10 million poor people in the region.
- *Population pressures.* Moreover, these unstable political, economic, and social conditions will not be alleviated with the quickly increasing population growth in the poorest countries (the "bottom third" countries). Population increases worldwide are unprecedented—see Box 1.1 for an overview of this in historical terms—and nowhere is the growth faster than in the less developed countries. Here is how a recent article explaining "how the biggest demographic upheaval in history is affecting global development":

Today, 95 percent of population growth occurs in developing countries. The populations of the world's 50 least developed countries are expected to more than dou-

²⁵ Much of the information here comes from <http://www.afrol.com/articles/23496> (last visited July 20, 2007).

Box 1.1: Increases in World Population

The following figures for the historical growth in world population are excerpted from several sources. Although sources differ in some details (especially for years before about 1800), the overall trend is unmistakable: recent population increases are dramatic.

<i>Year (CE/AD)</i>	<i>Population</i>	<i>Year (CE/AD)</i>	<i>Population</i>
1	200 million	1940	2,300 million
1000	250 million	1950	2,550 million
1100	300 million	1955	2,800 million
1200	360 million	1960	3,000 million
1250	400 million	1965	3,300 million
1300	360 million	1970	3,700 million
1350	440 million	1975	4,000 million
1400	350 million	1980	4,000 million
1500	430 million	1985	4,850 million
1600	550 million	1990	5,300 million
1650	470 million	1995	5,700 million
1700	600 million	2000	6,100 million
1750	630 million	2005	6,450 million
1800	820 million	2010 (proj.)	6,800 million
1850	1,130 million	2020 (proj.)	7,600 million
1900	1,550 million	2030 (proj.)	8,200 million
1910	1,750 million	2040 (proj.)	8,800 million
1920	1,860 million	2050 (proj.)	9,200 million
1930	2,070 million		

Another way of looking at these figures is by “billion-person milestones”:

<i>Year</i>	<i>Population</i>
1802	1 billion
1928	2 billion
1961	3 billion
1974	4 billion
1987	5 billion
1999	6 billion

Note: For a “slide show” detailing the geographical distribution of the world’s population at each of the “billion-person milestones”, see http://www.globalchange.umich.edu/globalchange2/current/lectures/human_pop/human_pop.html (last visited July 9, 2007).

ble by the middle of this century, with several poor countries tripling their populations over the period. By contrast, the population of the developed world is expected to remain steady at about 1.2 billion, with declines in some wealthy countries.²⁶

- *Deforestation.* However, humans (ever increasing in numbers) are not the only ones suffering in the world; Mother Nature herself is also suffering. In 2005, across the globe, there were just under 4 billion hectares of forest, averaging about 0.62 hectare per person.²⁷ However, forest distribution is drastically uneven; the ten most forest-rich countries accounted for almost two-thirds of the total forest area, while seven countries had no forest at all, and an additional fifty-seven countries had forest on less than 10 percent of their total land area. In the last couple of years, deforestation has been occurring at a rate of about 13 million hectares per year, although this rate has been slowing as conservation initiatives extended some protection to almost 11 percent of the total forest area. This deforestation reduces the ability of forests to carry out a variety of highly significant environmental and social functions, including soil and water conservation, avalanche control, sand-dune stabilization, desertification control, coastal protection, and providing support and resources for recreation, tourism, education, and conservation of cultural and spiritual sites. Deforestation is also bringing (especially in Amazonia) a dramatic decline in the biological genetic pool on which humans depend for drugs (some already known, many yet to be discovered) to fight disease.
- *Disease.* With increased travel and transport, epidemic and pandemic diseases in one country can now travel much faster than ever before, thus putting all countries at risk—as in the case of Andrew Speaker, the US lawyer who traveled across national borders recently with full awareness that he might have had an especially dangerous form of tuberculosis. His globe-trotting caused an international health scare, although he was eventually diagnosed with a less severe, non-contagious form of the disease.
- *Climate change.* As the Al Gore film *An Inconvenient Truth* illustrated, global warming poses threats that are colossal in scale

²⁶ David E. Bloom and David Canning, *Booms, Busts, and Echoes*, 43 FINANCE & DEVELOPMENT, Sept. 2006, at 8, 9.

²⁷ Most of the information here comes from the Food & Agriculture Organization. See <http://www.fao.org/forestry/foris/data/fra2005/kf/common/GlobalForestA4-ENsmall.pdf> (last visited July 20, 2007).

and that promise a cascade of disasters.²⁸ Already, evidence indicates that climate changes in the twentieth century affected a diverse set of physical and biological systems. For example, the environmental effects of climate changes include shrinkage of glaciers; thawing of permafrost; shifts in ice freeze and break-up dates on rivers and lakes; increases in rainfall and rainfall intensity in most mid- and high-latitudes of the Northern Hemisphere; lengthening of growing seasons; and earlier flowering dates of trees, emergence of insects, and egg-laying in birds. Examples of species that may be threatened by climate changes include forest birds in Tanzania, the Resplendent Quetzal (said by some to be the Western Hemisphere's most beautiful bird, and so revered by the Guatemalans that they named their currency after it), the mountain gorilla in Africa, amphibians that are native to cloud forests of the neotropics, the spectacled bear of the Andes, the Bengal tiger and other species that are native to the Sundarban wetlands, and rainfall-sensitive plant species that are native to the Cape Floral Kingdom of South Africa. Examples of plant life that may be affected by climate changes include coral reefs, mangroves, and other coastal wetlands; montane ecosystems that are restricted to the upper 200–300 meters of mountainous areas; prairie wetlands; remnant native grasslands; coldwater and some coolwater fish habitat; ecosystems overlying permafrost; and ice edge ecosystems that provide habitat for polar bears and penguins.

If Cynthia reads this litany of (mainly) bad news—on mayhem and chaos, on guns, on farm despair, on population pressures, on deforestation, on disease, and on climate change—she would surely conclude that there is an undeniable and inescapable interconnection among the fates of all people, and all species, on the planet. Yet Cynthia might ask how some of these points pose “development issues”. For example, what does global warming (included in the above litany of bad news) have to do with development? The answer is straightforward: galloping population increases and growing economic activity worldwide will continue to contribute to the greenhouse gases that lead to global warming, unless smart development models are adopted—not only in the poorest and middle-income countries, of course, but also in the economic powerhouses (particularly the USA and the PRC) that are primarily to blame for the problem.

²⁸ Most of the information here comes from http://www.grida.no/climate/ipcc_tar/vol4/english/153.htm#71 (last visited July 20, 2007).

2. *Terrorism: Predictable Consequence or Parallel Conflict?*

Let us give special attention to terrorism. It is commonplace in the USA to refer to a “war on terrorism” or a “war on terror”. Is it really a war? The Bush-Cheney administration has cast it in that light, presumably in order to broaden public support for the military interventions that have been undertaken in response to several terrorist attacks, especially the attacks of September 11, 2001.²⁹ The campaign against terrorism obviously is not a “war” as that term has been defined in recent centuries for purposes of international law. However, the term “war” can be used in many ways, so there is nothing intrinsically improper about applying the term to the campaign against terrorism. Indeed, the title of this book uses the term “war” in a manner that also falls outside its technical definition for purposes of international law. Lyndon Johnson did the same in declaring a “War on Poverty”³⁰; Jimmy Carter evoked a similar image in proclaiming that the energy crisis that faced the USA at the height of the 1970s oil crisis was “the moral equivalent of war”.³¹

There is, however, a different issue that warrants our attention. Is the so-called “war on terrorism” something that we should regard as the Fifth World War, starting around the beginning of the twenty-first century and lasting until who-knows-when? I prefer not to characterize it that way. Instead, I believe the campaign against terrorism should be viewed differently. I regard it as a *necessary response* to an *unacceptable response* to *unacceptable circumstances*. Now let me untangle that partially italicized phrase.

²⁹ Perhaps in order to distance himself from the Bush-Cheney administration, Gordon Brown made it clear within a few days after he took over from Tony Blair as Britain’s Prime Minister in mid-2007 that he would not be using the term “war on terror”. See Philip Stephens, *How to Defeat the Jihadis in Something Other Than a War*, FINANCIAL TIMES, July 6, 2007, at 9.

³⁰ For information on President Johnson’s “war on poverty”, see the National Public Radio report aired in January 2004 on the fortieth anniversary of the announcement of that “war”, *available at* <http://www.npr.org/templates/story/story.php?storyId=1589660> (last visited June 24, 2007).

³¹ For a transcript of the televised speech of mid-April 1977 in which President Carter used this phrase in discussing the energy crisis, on, see http://www.pbs.org/wgbh/amex/carter/filmmore/ps_energy.html (last visited June 24, 2007). Curiously, an article by Andrew Bacevich that appeared two years ago in the *Wilson Quarterly* credits President Carter with announcing the beginning of what Bacevich calls “the real World War IV”. That announcement occurred, Andrew Bacevich asserts, in a different televised speech—Carter’s January 1980 State of the Union Address, when he unveiled what came to be called the “Carter Doctrine”, under which “[a]n attempt by any outside force to gain control of the Persian Gulf region . . . will be regarded as an assault on the vital interests of the United States of America, and such an assault will be repelled by any means necessary, including military force”. See Andrew J. Bacevich, *The Real World War IV*, 29 *WILSON QUARTERLY* 36 (2005).

The *unacceptable circumstances* I refer to are the despicable living conditions in which many persons find themselves in today's world. For at least half of the Earth's population, this is a world of grinding poverty. Some of the data presented above in Tables 1.2 and 1.3 illustrate this fact. And increasingly, the people living in that grinding poverty are aware of the fact that some *other* people in the world—most of those in the “top-sixth countries”—enjoy dramatically better living conditions. These conditions are reflected in some of the data presented above in Table 1.4 (referring to standards of living in ten of the world's richest countries). Hence, both in absolute terms and in relative terms, the living conditions of many of the world's people constitute *unacceptable circumstances*.

It should come as no surprise that some people caught up in these unacceptable circumstances would engage in terrorist acts—blowing up buildings and buses and markets and themselves. In my view, this is a predictable response. It is an *unacceptable response*, to be sure, but it is predictable, especially where a few charismatic zealots, relying on dressed-up distortions of great religions, are able to provide both motivation and excuse for such terrorism. None of this should come as a surprise.

What *should* come as a surprise—it does to me, at least—is that there is so little appreciation of the fact that one obvious way to fight terrorism is to fight the conditions in which it breeds. I believe we can do so by adopting a renewed multilateral commitment to an ideology of liberal, intelligent, participatory, multilateral, and sustainable human development.

In sum, I do not regard the “war on terrorism” as another world war, following on the heels of World War I, World War II, and the Cold War, and paralleling what I have called the Global Development War. Instead, I regard the campaign against terrorism to be a *necessary response*—but by far too narrow a response—to a relatively small but growing group of persons who, spurred by zealots eager to fuel their bitterness, are themselves responding to terrible conditions (either their own conditions or those of persons on whose behalf they act, as in the case of the doctors in England who in mid-2007 planned terrorist attacks in London). Their response, I believe, is entirely predictable. Unless and until dramatic change is made in world economic and social circumstances, such people can be expected to continue their terrorist acts, regardless of what new and clever weapons we may devise to fight them.

Viewed from that perspective, it is not much of an oversimplification to echo the famous words of Pogo, the cartoon character: “We have met the enemy, and he is us”.³² I do not mean that Americans, or others of us

³² According to several sources on the Internet (including <http://www.halexan->

in the rich “top-sixth” countries, are avowed enemies of the other five-sixths of the world, or some segment thereof—although this is surely how a Saudi-born, bin-Laden-inspired, Al-Qaeda-trained terrorist sees us—but I mean something that is perhaps just as serious. I mean that we are *our own* worst enemies if we fail to see the need to eliminate the economic and social conditions in which terrorism festers.

C. The Machinery and Theaters of War

1. The Political and Institutional Topography

The Global Development War, involving competing ideologies, is being fought in policy-making settings, particularly at the national level. These include all of the following official settings: national parliaments; executive offices (such as those of prime ministers and presidents); ministries of finance, trade, development, natural resources, and foreign affairs; and government agencies (especially in the rich “top-sixth” countries) whose work focuses expressly on development assistance. Political campaigns for national office also constitute policy-making settings for these purposes, as those campaigns address (or fail to address) matters of international economic relations and development. Even the popular press—indeed, *especially* the popular press—is another setting in which such policy-making takes place, or is at least discussed and proposed.

The competition over development ideology also occurs, of course, in other non-official settings, particularly in non-government organizations. NGOs of all political and ideological stripes—whether they focus on human rights, on intellectual property rights, on trade policy, or on environmental protection, and whether they are pressuring for greater logging and mining concessions or are representing displaced workers or indigenous peoples or business entrepreneurs or educational and religious institutions—all these are participants in the Global Development War.

The first of the two categories mentioned above—official national political institutional settings, which we might call the “corridors of power”—have been involved in policy making forever, of course, or at least since the times nation-states emerged. But the second of the two categories, NGOs, are a relatively recent phenomenon. They require some special

dria.org and http://www.igopogo.com/we_have_met.htm), cartoonist Walt Kelly first used the quote “We Have Met The Enemy and He Is Us” on a poster for Earth Day in 1970. In 1971, he did a two-panel version with Pogo and Porky in a trash filled swamp, with Pogo responding to Porky with “Yep, son, we have met the enemy and he is us”. In 1972, it was the title of a book, POGO: WE HAVE MET THE ENEMY AND HE IS US.

attention, particularly because NGOs have brought to bear such scrutiny of the global economic organizations that for the past half-century have been the principal conduits of international development assistance and the principal institutions responsible for shaping the world economy. NGOs enjoy a special yet uncertain status in international law and politics. As explained very early in this chapter, the traditional view of international law held that the only entities with legal capacity and personality on the international plane were nation-states. The famous *Reparations* case alluded to earlier established that international organizations such as the United Nations, while not the same as states, do in fact have attributes that are analogous to those of states, including the capacity to sue and be sued, to own and transfer property, to enter into contracts, and more. In the years that have intervened since the *Reparations* case (decided by the International Court of Justice in the 1940s), the status of public inter-governmental institutions such as the UN and the IMF and the other global economic organizations has been further defined and solidified.

That has not yet occurred with NGOs. Nor has it occurred in respect of individuals. For the most part, international law still recognizes only two types of entities—states and (public) international organizations—as having legal personality at the international level. There are, however, important ways in which individuals (and, by extrapolation, groups of individuals) do have some measure of standing in international law. This subject was introduced earlier in our examination of how issues of human rights emerged on the international stage around the middle of the twentieth century. As was noted there,³³ the Nuremberg trials conducted just after World War II established the proposition that some international legal obligations do in fact apply to individuals. The application of international legal *obligations* to individuals set the stage for application of international legal *rights* to individuals. And among the many varieties of rights that have emerged from the human rights movement have been so-called “third-generation rights”—the rights of groups of “peoples” to certain benefits, such as the purported “right to self-determination”.³⁴

³³ See subsection IB2 of this chapter.

³⁴ The “right to self-determination” is announced in both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights (both dating from 1966), but the exact contours of that right remain largely undetermined, at least in practice. For a brief discussion of this, see John W. Head, *Selling Hong Kong to China: What Happened to the Right of Self-Determination?*, 46 UNIVERSITY OF KANSAS LAW REVIEW 283 (1998).

More important than this legal expansion of the standing of groups has been the practical expansion of their influence. Box 1.2 lists some of the many groups that direct a significant portion of their attention to matters relating to international development and to the official agencies involved in supporting it:

Box 1.2: Selected NGOs Involved in International Development Issues

- Action Aid—<http://www.actionaid.org/>
- Africa Action—<http://www.africaaction.org/>
- Bank Information Center—<http://www.bicusa.org/>
- Bretton Woods Project—<http://www.brettonwoodsproject.org/>
- Central and Eastern Europe Bankwatch—<http://www.bankwatch.org/>
- Center of Concern—<http://www.coc.org/>
- Friends of the Earth—<http://www.foe.org/>
- Global Health Council—<http://www.globalhealth.org/>
- Human Rights Watch—<http://www.hrw.org/>
- International Food Policy Research Institute—http://www.ifpri.org
- International Rice Research Institute—<http://www.irri.org/>
- International Trade Union Confederation—<http://www.icftu.org/>
- Oxfam International—<http://www.oxfam.org/>
- Save the Children—<http://www.savethechildren.org/>
- Social Watch—<http://www.socialwatch.org/>
- Third World Network—<http://www.twinside.org.sg/>
- Transparency International—<http://www.transparency.org/>
- World Wildlife Fund—<http://www.wwf.org/>

These NGOs, and many more, contribute to the policy debate over development ideology and practice. They are therefore players in the Global Development War.

2. *The Global Economic Organizations*

The most prominent players, however, in the Global Development War are the global economic organizations themselves—that is, the IMF, the World Bank (along with the four regional multilateral development banks that are fashioned after the World Bank), and the WTO. As noted in the Foreword and Synopsis at the beginning of this book, those organizations are standing in the middle of the war, on the overall field of battle where the global development war is being waged. Hence, we must pay special

attention to those global economic organizations and to the recent criticisms that have been directed their way. We shall start in Chapter Two with the latter of these—the criticisms—so that we can know what specific aspects of these organizations we should look for in Chapter Three, which offers a summarized factual account of the IMF, the World Bank (and its regional counterparts), and the WTO.

A Cacophony of Criticisms— Attacking the Global Economic Organizations

In this short chapter I wish to highlight some of the causes and consequences that are at work in what I have called the Global Development War, and particularly those that relate to the global economic organizations (GEOs)—that is, the IMF, the World Bank and its regional counterparts, and the WTO. Let me take a moment to explain what I mean by “causes” and “consequences” in this context.

By “causes” of the Global Development War, I refer particularly to the extraordinarily widespread discontent, frustration, even disgust at the seeming inability of the GEOs to mount successful attacks against the crushing poverty that afflicts a sizeable portion of the world’s population. For many people, the underlying culprit is globalization—a sentiment that Joseph Stiglitz surely tied into by titling his 2002 book *Globalization and Its Discontents*, even though the book was essentially a diatribe, poorly delivered according to some,¹ against the IMF. For other people, the underlying culprit is not globalization as such but “the globalizers” themselves—that is, the GEOs. It was this sentiment that Ngaire Woods reflects in titling her 2006 book *The Globalizers*. I shall have some comments to offer in this chapter and later chapters on Dr. Woods’ work, as well as on what I regard as a more likely underlying cause of the discontent and disgust that are at play in the Global Development War.

¹ In reviewing Stiglitz’s book, Professor Kevin Kennedy explains that it amounts to “nothing less than a diatribe”, mainly against the IMF, in which the author, a Nobel laureate in economics and former chief economist at the World Bank, “makes no pretense of being balanced or of writing a scholarly work” but instead delivers only “rather rambling, uneven rhetoric” that includes “mean-spiritedness and ad hominem attacks”. Kevin Kennedy, *A Review of Globalization and Its Discontents*, 35 *GEORGE WASHINGTON INTERNATIONAL LAW REVIEW* 251, 252–53 (2003). Kennedy criticizes Stiglitz’s “wild hypothesizing, unsubstantiated accusations, and overheated rhetoric” and, perhaps more importantly, the glaring errors or omissions in Stiglitz’s analysis of the IMF’s role in the Asian financial crisis and Russia’s painful economic transformation. *Id.* at 255–257. An equally critical review of Stiglitz’ book came in the form of an open letter from an IMF official who noted numerous instances of Stiglitz being too short on facts and too long on ego. See *Rogoff’s Discontent With Stiglitz*, 31 *IMF SURVEY* 209, 209–211 (July 8, 2002). I agree with these assessments of Stiglitz’s book.

By “consequences” of the Global Development War, I refer to the specific manifestation of the discontent and disgust, or at least the manifestation that is central to this book—the range of criticisms that have been directed at the GEOs. My aim in this respect is to identify, sort out, and evaluate the various criticisms that have been leveled at the IMF, the multilateral development banks (MDBs), and the WTO. In this chapter I shall undertake only the first two of these tasks—identifying those criticisms and sorting them out in a “bare-bones” manner. To do more than this would be impossible without an examination of the GEOs themselves—what they are, why they were created, how they operate, etc. We shall turn to those factual issues in Chapter Three. But by looking first at a “bare-bones” listing of the criticisms leveled at them, we shall know what to watch for in the descriptive accounts offered in Chapter Three. Then in Chapters Four and Five I shall undertake to bring the two tracks together—that is, evaluating the criticisms in light of the current reality of the GEOs.

I. A WORLD OF PROBLEMS

A. Growing Economic Distress

When I was growing up, my parents would take me to special cultural programs held in high school auditoriums in “cities” nearby our farming community, presumably with some thought of letting me see a little of the outside world. Ballet and opera performances were largely lost on me as a pre-teen, but travelogues caught my fancy. A “travelogue” in that context consisted of a filmstrip, shot by a well-spoken amateur, showing scenes of his or her travels to some distant, exotic, usually mysterious and slightly primitive place—California, for example, or somewhere in Europe with a suspicious excess of consonants in the place-names. Most such travelogues featured (perhaps this was a requirement of the genre?) a sequence of pictures that the travel-master had taken of himself or herself, with the movie camera placed on its side while the travel-master walked along a recently felled tree. Deftly aiming the camera to show only one side of the tree, our hero could include the sequence showing him or her striding nonchalantly straight up a tree. This delighted me. The high school gymnasium swelled with amazed laughter during these scenes.

Unfortunately, when one of these travelogues started showing us the people and culture of the faraway land, the show often took on a weird quality of smug voyeurism. As viewers, we were like visitors to a zoo watching the odd animals, seeing staged scenes of questionable authenticity. The travel-master was not a guide helping us to interpret the scenes but more of an amused confidant joining in our observations of how odd and curiously unfortunate was the foreign culture he or she was showing us. The travel-master did not succeed, and probably had little interest, in making

us feel as if we were at all close to that foreign culture. Instead, the foreign culture remained distant to us. It was merely the subject of an oversimplified curiosity show.

Many television news reports of human suffering today resemble those travelogues. I find that most video clips of Darfur or of numerous other tragic sites in sub-Saharan Africa or poverty-laced highlands in South America or rough back streets of Cairo often blend sensationalism with paternalism in a way that operates as a local anesthetic. As in those travelogues from long ago, the viewer—at least a viewer in one of the rich “top-sixth” countries—can watch but not absorb, can chew without swallowing. The viewer can rest assured that the brief and breathless excursion to a troubling foreign scene of misery will be followed soon by a story on Baby Brenda’s recovery from a two-night stay at the bottom of an abandoned well or by a commercial break touting the benefits of a new drug to fight erectile function disorder. And so the viewer is able to see the foreign scene of misery and yet keep it at arms length—it remains foreign and distant, the subject of an oversimplified curiosity show.

Of course, the viewer is hardly to blame. Each of us has an armory of self-defense mechanisms designed to prevent tragedy, whether our own or others’, from paralyzing us. From an objective perspective, however, much of what occurs in the world is breathtakingly bad. In particular, the living conditions for many of the persons who share the world with us—most of the persons who survive on less than \$1 or \$2 per day, for example—are abhorrent and would surely stir us to action if we suddenly saw a family of such persons in our backyard or sitting in the church parking lot.

Many people, to their credit, *are* stirred to action. Some of them join the Peace Corps or participate in non-governmental organizations (NGOs) development efforts overseas; some of them marched in Seattle in November 1999 to protest the WTO Ministerial meeting. People do such things for many reasons, but a motivating reason for many of them is that they wish to push back against what appear to be rising levels of economic distress, social disintegration, and environmental degradation. In Chapter One, evidence of these factors appeared in Tables 1.2, 1.3, and 1.4, which laid out various indicators of human well-being for three limited sets of countries. To expand on that information, Table 2.1 offers a comparison of just three key indicators but across larger groupings of countries.

These aggregated data reflect, of course, the specific circumstances of individual people. The dramatic differences revealed in Table 2.1, like those in the tables presented in Chapter One, naturally raise the question of why the circumstances exist and what can be done about them.

Table 2.1
Human Development Indicators, by Various Groupings and Regions

Country grouping	Human Development Index (HDI)	Life Expectancy at Birth (Years)	Per Capita GDP (PPP in US\$)
OECD countries	0.923	77.8	27,571
LDCs, aggregated	0.679	65.2	4,775
Least developed LDCs	0.464	52.4	1,350
Latin America & Caribbean	0.795	72.2	7,964
South Asia	0.599	63.7	3,072
Sub-Saharan Africa	0.472	46.1	1,946

Source: UN Human Development Report 2006, p. 286.

Notes:

- The thirty OECD countries are Austria, Australia, Belgium, Canada, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Korea, Luxembourg, Mexico, Netherlands, New Zealand, Norway, Poland, Portugal, Slovakia, Spain, Sweden, Switzerland, Turkey, the UK, and the USA.
- “LDCs” = less developed countries. LDCs referred to here are the 137 countries classified by the UN as “developing countries”.
- The “least developed” countries comprise the fifty poorest countries among the 137 LDCs. Many of them are in sub-Saharan Africa.

B. Globalization as Culprit?

I see little point to worrying whether globalization is good or bad. Assuming we define globalization as the increasing integration of the world of commerce, communication, and culture, then it is inevitable, or nearly so. Barring some worldwide cataclysm—a nuclear meltdown, an influenza pandemic of terrible proportions, a sudden environmental catastrophe, a world war—the momentum toward ever greater integration will not be arrested. What *is* worth considering is how we might most effectively direct and manage such globalization, and in particular (1) how to regulate (if possible) the actions by some players, such as large private-sector financial institutions or business conglomerates or national governments, that most directly affect our shared destiny, and (2) how to undertake an allocation of resources that will best serve the long-term interests of the world’s people as a whole.

I suspect that many persons who denounce globalization would, on reflection, agree with the distinction I have made in the previous para-

graph. For them, striking out against globalization as such—by pressing for economic isolationism, for example, through high tariffs and through bans on incoming foreign investment and through tax penalties for “overseas outsourcing” and the like—is in fact a second-best response, attractive to them only because they do not see how globalization and its main players can ever be regulated, or how any appropriate allocation of resources can ever be accomplished.

Some persons—these include Dr. Ngairé Woods of Oxford and many others—focus their attention not on globalization as a process or phenomenon, but rather on “the globalizers”, variously defined as (1) the GEOs that we shall examine in Chapter Three or (about as often) as (2) the multinational corporations (including private financial institutions) whose influence has expanded so dramatically in recent years. These persons, to my mind, are barking up the right tree. They do not regard globalization itself as the culprit to blame for the ills that afflict the world in economic and other terms but focus on the inability (thus far) to accomplish the two aims I alluded to above: (1) regulating (if possible) the actions by some players, such as large private-sector financial institutions or business conglomerates or national governments, that most directly affect our shared destiny, and (2) undertaking a system for allocating resources that will best serve the long-term interests of the world’s people as a whole.

In particular, many of those critics see the GEOs as blameworthy. Some consider the shortcomings, even the perfidy, of the GEOs to be so great as to require a complete dismantling of those institutions. For example, an October 2006 article in the journal *Global Governance* opens with this observation: “The question regarding the International Monetary Fund (IMF) for many civil society organizations is whether the organization is worth salvaging”.² Other critics press for their own governments to walk away from the GEOs—to respond to the GEOs’ (perceived) evil by abandoning them. Such an approach was recently proposed at the highest levels in Venezuela, whose president Hugo Chávez has asserted that he will leave the IMF and the World Bank, which he considers under the thumb of what he calls “the empire”.³ Similarly, legislation was proposed in the US Congress in March 2005 for US withdrawal from the WTO.⁴ Still other critics urge dramatic

² Jo Marie Griesgraber and Oscar Ugarteche, *The IMF Today and Tomorrow: Some Civil Society Perspectives*, 12 *GLOBAL GOVERNANCE* 351 (2006).

³ *Wolf v. Wolf*, *ECONOMIST*, May 12, 2007, at 14. Presumably out of similar sentiment, Ecuador’s President Rafael Correa expelled the World Bank’s country representative from his country in April 2007. See *World Bank Crisis ‘Grist to the Mill’ of Chavistas*, *FINANCIAL TIMES*, May 4, 2007, at 2.

⁴ H.J. Res. 27, sponsored by Rep. Bernard Sanders with ten cosponsors. The bill was reported adversely out of the House Ways and Means Committee in May 2005, after hearings, and failed to pass in the House on a vote of eighty-six in favor and 338 against.

changes in the GEOs, in hopes that those institutions can be vehicles for accomplishing the two aims I have mentioned—or at the very least can operate in ways that will not frustrate the efforts to accomplish those aims by other means.

It is to all these critics—whether they urge abolition, abandonment, or amendment of the GEOs—that I am eager to respond, because I believe their criticisms and demands lie at the heart of the great ideological debates involved in what I have called the Global Development War. Let us identify, first in a bare-bones fashion, what the key criticisms and demands are.

II. CATALOGUING THE CRITICISMS

A. Criticisms by Types of GEOs

1. The Logic of Disaggregation

At least two possible methods can be used in cataloguing and enumerating the criticisms that have been leveled at the GEOs. The first method is to identify criticisms by individual GEO—that is, looking separately at the IMF, the WTO, and the World Bank and regional development banks—so that every (worthwhile) complaint about each institution is given separate attention. An obvious advantage of this method is its completeness. We can examine, for example, the complaint that the WTO is undemocratic separately from the complaint that the IMF is undemocratic. This makes sense because the contours of the complaint are somewhat different in the case of the WTO, which operates on a one-state-one-vote basis, from the case of the IMF, whose weighted voting system has been fiercely condemned as undemocratic.

Moreover, several complaints about one of the institutions simply do not arise in respect of one or more of the other institutions. Who would complain, for example, that the WTO is guilty of “mission creep” in the sense that it acts outside the scope of its charter by undertaking tasks not assigned to it? The WTO Charter is so new, and it grants such broad authority, that such a “mission creep” criticism simply doesn’t arise in the case of the WTO, at least in a form anything like that criticism as directed at the World Bank or the IMF.

2. The Twenty-Three Criticisms

On the strength of that reasoning, let us examine twenty-three key criticisms leveled at the GEOs, as enumerated in a disaggregated way—that is, on an institution-by-institution basis.⁵ Each of the following criticisms will

⁵ This is the approach taken in my earlier book, written for an academic-and-

be developed further in Chapters Four and Five. In listing them here, I do not, at this stage, register my agreement or disagreement with any of them. I also do not offer in the following list any specific citations to the sources of any particular criticism—that is, any reference to where (or from whom) the criticism has come. I do, however, give numerous details of that sort, along with pinpoint citations, in the Appendix to this Chapter Two.

Criticisms of the IMF

IMF policies and operations

- Criticism #I-1— *Bad medicine.* “The IMF prescribes economic and financial policies that fail to cure, and that indeed often make sicker, its borrowing member countries and the entire world economy”.
- Criticism #I-2— *Distributional and social injustice.* “The economic and financial policies that the IMF insists on create distributional inequities and ignore the social aspects of a country’s well-being”.
- Criticism #I-3— *IMF trampling of national sovereignty.* “In imposing conditionality on its loans, the IMF tramples on national sovereignty—not just in economics but increasingly in other areas of state autonomy”.

Character, control, and reach of the IMF

- Criticism #I-4— *IMF secrecy and opaqueness.* “The IMF is a closed, non-transparent organization that operates in secret, despite its insistence on transparency in the governments of its members”.
- Criticism #I-5— *The IMF democracy deficit.* “Controlled by a handful of rich countries, the IMF is an unaccountable autocracy in which the people most affected by its operations have far too little chance to participate”.

research audience, THE FUTURE OF THE GLOBAL ECONOMIC ORGANIZATIONS: AN EVALUATION OF CRITICISMS LEVELED AT THE IMF, THE MULTILATERAL DEVELOPMENT BANKS, AND THE WTO (2005), from which I have drawn the following list.

- Criticism #I-6— *IMF mission creep*. “As both a legal and a practical matter, the IMF has overstepped its authority and its competence in providing bailouts and adopting policies on a proliferation of topics”.
- Criticism #I-7— *Asymmetry in obligations*. “The IMF permits its rich member countries to insist that the poor borrowing member countries follow certain policies without pressuring the rich countries to follow those policies themselves”.

Criticisms of the MDBs—that is, the World Bank and its regional counterparts

MDB policies and operations

- Criticism #II-1— *Bad economic and financial policies and projects*. “The MDBs promote a flawed *laissez-faire* economic model, conceive of ‘development’ too narrowly, and support bad projects that do not help the borrowing member countries”.
- Criticism #II-2— *Wrong form of financial assistance*. “MDB lending operations are anachronistic now that effective international capital markets exist; so MDB financing (if continued at all) should take the form of grants, not loans”.
- Criticism #II-3— *Environmental degradation*. “MDB-financed projects too often have devastating effects on the environment, because the MDBs disregard environmental issues at both the project design and project implementation phases”.
- Criticism #II-4— *Human rights shortcomings*. “The MDBs largely disregard human rights issues and act independently of any accepted human rights norms and institutions; and the MDBs fuel, not fight, public corruption”.
- Criticism #II-5— *MDB trampling of national sovereignty*. “In imposing conditions on the rights of member coun-

tries to borrow, the MDBs violate the sovereignty of those countries, and in particular the principle of self-determination”.

- Criticism #II-6— *Weaknesses in staffing and management.* “The MDBs are poorly managed, in part because (i) staff members are not properly accountable for their performance and (ii) staff hiring and promotion rest on inappropriate criteria”.

Character, control, and reach of the MDBs

- Criticism #II-7— *MDB secrecy and opaqueness.* “The MDBs practice both documentary secretiveness and operational secretiveness, thereby remaining inappropriately hidden from scrutiny and insulated from external criticism”.
- Criticism #II-8— *The MDB democracy deficit.* “Controlled by a handful of rich countries and corporate interests, the MDBs are largely unaccountable to the people most affected by their operations”.
- Criticism #II-9— *MDB mission creep.* “The MDBs are gripped by ‘policy proliferation’; they have diluted their commitment to true economic development by expanding their operations into areas in which they have no authority or competence”.
- Criticism #II-10— *Asymmetry in obligations.* “As in the IMF, the MDBs’ rich member countries insist that the poor borrowing member countries follow certain policies, yet the rich countries can (and often do) fail to follow those policies themselves”.

Criticisms of the WTO

WTO policies and operations

- Criticism #III-1— *Free trade’s fostering of economic harm.* “The WTO’s central aim is wrong, because free

trade does more economic harm than good to a national society and to the world as a whole”.

- Criticism #III-2— *Free trade’s distributional injustice*. “Even if free trade brings aggregate economic benefits, those benefits are not fairly distributed, either within a national economic system or among nations; and the WTO permits this injustice”.
- Criticism #III-3— *Free trade’s race to the bottom*. “The WTO’s free-trade agenda is wrong also because free trade causes a ‘race to the bottom’ in the regulatory standards for labor (worker safety and health) and environmental protection”.
- Criticism #III-4— *WTO disregard for labor and environmental values*. “Even if free trade does not in itself cause a race to the bottom, the WTO fails to give adequate attention to environmental and labor concerns in its operations”.

Character, control, and reach of the WTO

- Criticism #III-5— *WTO secrecy and opaqueness*. “The WTO is a closed, non-transparent organization that operates in secret, inappropriately hidden from scrutiny and hence insulated from external criticism”.
- Criticism #III-6— *The WTO democracy deficit*. “The WTO is undemocratic, both (i) in excluding participation by citizens and (ii) in having no allegiance to political authorities—and hence can impose its will arbitrarily on its member countries”.

B. The Eight Clusters of Complaints

The foregoing enumeration of criticisms is constructed on a disaggregated basis—that is, on an institution-by-institution basis. Although it is logical to study each of the criticisms in this way, individually by specific GEO, there is also a logic in aggregating the criticisms. We might consider such aggregation as a “clustering” or a “bundling” of the criticisms to make them

easier to study and evaluate. For one thing, such aggregation avoids repetition. While some criticisms apply with different shape or intensity to different GEOs, there are broad similarities that can be lost, or at least inefficiently discussed, by separate treatment. With this in mind, the following list enumerates the key criticisms leveled at the GEO as organized in an aggregated way, by substance, with an indication of which institution(s) each of these “clusters” of criticism implicates.

Policies and operations of the GEOs

- Criticism “Cluster” A— *Bad policies, projects, and performance.* “All the GEOs promote a faulty and destructive policy in encouraging *laissez-faire* policies, including especially an ideology of free trade, and the MDBs and the IMF in particular prescribe policies (in the so-called ‘Washington Consensus’) that do more harm than good. Moreover, the MDBs promote flawed policies and projects, provide the wrong sort of financing, and have incompetent management and staff”. [Examples: See items summarized under criticisms I-1, II-1, II-2, II-6, and III-1 in the Appendix.]⁶
- Criticism “Cluster” B— *Distributional and social injustice.* “Even if (despite the criticisms in ‘Cluster A’) the policies and projects that emerge from the GEOs’ operations do in fact bring *aggregate* benefits to national and regional economies, those benefits are distributed in ways that are deeply inequitable and that ignore key social aspects of development. Expressed differently, the GEOs’ operations create too many ‘losers’ for us to accept”. [Examples:

⁶ This is one of the biggest “clusters” of complaints against the GEOs. Three prominent illustrations (in addition to others referred to in the Appendix) would be these: (1) the charge that the IMF has repeatedly given countries the wrong advice in insisting that they balance budgets, liberalize investment rules, and devalue currencies in times of crisis; (2) the charge that the World Bank has financed innumerable ill-designed and badly implemented projects that burden countries with debt while introducing social evils and economic dislocation; and (3) the charge that the WTO’s insistence on free trade undercuts local farmers and manufacturers, thus injuring economies—especially weak economies, destroying any chance they have of meeting the challenges of global market forces.

See items summarized under criticisms I-2, II-3, II-4, and III-2 in the Appendix.]

- Criticism “Cluster” C— *Environmental degradation*. “A particularly troubling and dangerous consequence of GEO operations is that they disregard the overriding need to protect the physical environment that we all share. This is especially true of (i) the MDBs, whose projects often have devastating environmental effects, and (ii) the WTO, which causes a “race to the bottom” in national environmental regulations”. [*Examples*: See items summarized under criticisms II-3, III-3, and III-4 in the Appendix.]
- Criticism “Cluster” D— *Encroachments on sovereignty*. “In imposing conditionality on their loans, the IMF and the MDBs trample on national sovereignty, and particularly on the principle of self-determination. And the WTO does the same when it prohibits countries from enforcing national rules aimed at protecting national social and economic values”. [*Examples*: See items summarized under criticisms I-3 and II-5 in the Appendix.]

Character, control, and reach of the GEOs

- Criticism “Cluster” E— *Secrecy and opaqueness*. “All of the GEOs are closed, non-transparent organizations that (despite the insistence by some of them on transparency in the governance of their member states) practice both documentary secretiveness and operational secretiveness—thereby remaining inappropriately hidden from scrutiny and insulated from external criticism”. [*Examples*: See items summarized under criticisms I-4, II-7, and III-5 in the Appendix.]
- Criticism “Cluster” F— *The democracy deficit*. “Controlled by a handful of rich countries, the IMF and all of the MDBs are unaccountable autocracies in

which the people most affected by their operations have far too little chance to participate or exert influence. The WTO is also undemocratic in that it excludes participation by citizens and in that it has no allegiance to political authorities and can therefore impose its will arbitrarily on its member countries. Moreover, the governments of many GEO member countries are themselves undemocratic, so there is no guarantee (and often little likelihood) that those governments will reflect the views of their constituents”. [Examples: See items summarized under criticisms I-5, II-8, and III-6 in the Appendix.]

- Criticism “Cluster” G— *Mission creep*. “As both a legal matter and a practical matter, the IMF and the MDBs have all overstepped their authority and their competence. They have acted *ultra vires* and, in adopting policies on a proliferation of topics, they have severely undercut their ability to fulfill the functions originally prescribed for them”. [Examples: See items summarized under criticisms I-6 and II-9 in the Appendix.]
- Criticism “Cluster” H— *Asymmetry in obligations*. “The IMF and the MDBs permit their rich member countries to insist that the poor borrowing member countries follow certain policies without pressuring the rich countries to follow those policies themselves—and in fact some of the rich countries consistently fail (indeed refuse) to abide by such policy prescriptions, to the detriment of the world economy”. [Examples: See items summarized under criticisms I-7 and II-10 in the Appendix.]

This bare-bones list of eight “clusters” of criticisms (like the more detailed “disaggregated” list of criticisms offered earlier) distinguishes between two categories of criticisms. The first relates to the policies and operations of the GEOs; the second relates to the character, control, and reach of the GEOs. The distinction between the two types of criticisms is

not what lawyers would call a “bright line” division, but it will emerge in Chapters Four and Five. Chapter Four deals with the “policies and operations” criticisms, and Chapter Five deals with the “character, control, and reach” criticisms.

For now, we may distinguish the two categories of criticisms as follows. The “policies and operations” criticisms focus mainly on the effects that the GEOs’ operations have on the ground—specifically, in terms of the national economies of the countries to which the IMF lends, in terms of the specific “project areas” that MDB project loans are supposed to improve, in terms of the economic and social well-being of persons affected by the trade liberalization rules that the WTO enforces, and generally in terms of the ability of nation-states to chart the best course for their people. By contrast, the “character, control, and reach” criticisms focus mainly on institutional and governance issues. These include the transparency (or opaqueness) of the GEOs, the degree of accountability (if any) that the GEOs have in respect of “outsiders” (and whether such “outsiders” can adequately influence decision making within the GEOs), the faithfulness of the GEOs to their governing charters, and the fairness of their governance structures in general.

Representative Survey of Literature Criticizing the GEOs

This Appendix offers a representative annotated list of citations from a range of sources—law journals, books, newspapers, policy journals, websites, and others—in which criticisms of the types assessed in this book have appeared. I could have included these citations in the main text of the book, but that would have created some very bulky footnotes. Besides, I have tried to distill from the enormous amount of critical literature regarding the GEOs a manageable catalogue of criticisms that are worth considering in depth; for this purpose the individual writings, many of which overlap in substance, are of less interest than the main themes they reveal.

For the same reason, I have included in this representative list only those works that emerged as a result of a comprehensive collection-and-culling process undertaken in 2003–2004. The research carried out since then is reflected, of course, in the main text of this book, which is intended to reflect contemporary developments as of mid-July 2007. In the main text, I have provided citations to materials concerning the most important of those more recent developments. However, I considered it unnecessary to supplement the representative citations included in this Appendix with additional references.

This representative survey of the literature is structured by criticism. For these purposes, the criticisms are classified in the “disaggregated” fashion described in section IIA of Chapter Two. That is, for each of the twenty-three specific criticisms that I have identified there—seven for the IMF, ten for the MDBs, and six for the WTO—I cite in this Appendix several illustrations of that criticism in the literature. Then, within each of the twenty-three criticisms, I have organized the annotated citations alphabetically, with a few exceptions: in some cases I have sub-divided the literature regarding a particular criticism in a way that reflects the particular aspect(s) of that criticism that certain authors have focused on most closely.

It is perhaps worth emphasizing here, as I have in the main text of the book, that in providing this representative survey of literature criticizing the GEOs, I am by no means endorsing the criticisms. My own assessment of the criticisms appears in Chapters Four and Five. In this Appendix, I am simply reporting what my research into the literature reveals in terms of the criticisms leveled at the GEOs. It was from this research into the literature that I distilled the criticisms leveled at the GEOs into a manageable number.

I. CRITICISMS OF THE IMF

Criticism #I-1—Bad Medicine

Synopsis: “The IMF prescribes economic and financial policies that fail to cure, and that indeed often make sicker, its borrowing member countries and the entire world economy.”

For examples in the literature of writings that refer to this criticism generally, see:

- Graham Bird, *Reforming the IMF: Should the Fund Abandon Conditionality?*, 7 *NEW ECONOMY* 214, 215 (2000) (reporting the consensus among academic studies that IMF programs do seem to be associated with balance-of-payments improvements but that they have little impact on, or might even discourage, economic growth, increases in investment, or reductions in inflation);
- Gopal Garuda, *Lender of Last Resort: Rethinking IMF Conditionality*, 20 *HARVARD INTERNATIONAL REVIEW* 36, 38 (1998) referring to a 1990 IMF study concluding that IMF programs tend to reduce economic growth);
- Martin Khor, *IMF Policies Make Patient Sicker, Say Critics*, *THIRD WORLD ECONOMY* NO. 176, n.p. (Jan. 1–15, 1998), at <http://www.asienhaus.org/asiancrisis/imfasiakhor4.htm> (“Just as a patient can have his condition worsened, or even be killed, by a bad doctor or by the wrong medicine, a country whose finances have already been weakened . . . can have its economic prospects and long-term development crippled further by the IMF”.);
- Arthur MacEwan, *Economic Debacle in Argentina: The IMF Strikes Again*, *DOLLARS & SENSE*, Mar./Apr. 2002, at 22, 24–25 (asserting that the IMF makes a policy mistake in telling governments to balance budgets in times of crisis, and to provide unrestricted access for imports and foreign investment, and to give highest priority to repaying their countries’ international debts);
- Eugenia McGill, *Poverty and Social Analysis of Trade Agreements: A More Coherent Approach?*, 27 *BOSTON COLLEGE INTERNATIONAL AND COMPARATIVE LAW REVIEW* 371 (2004) (examining criticisms of the IMF for misdiagnosing financial crises, for using the wrong poverty reduction strategies, for insisting on trade liberalization that destroyed conditions necessary for growth, for lacking policy coherence, and for dominating, along with the World Bank and the WTO, the world economic system at the expense of the UN);
- David Moberg, *How to Fix the IMF; First, Do No Harm*, *IN THESE TIMES*, May 15, 2000, at 9, 10 (asserting that “[t]he overall record of countries under IMF structural adjustment programs—the policies imposed as a condition for loans—has ranged from unimpressive to disastrous”);
- Jason Morgan-Foster, Note, *The Relationship of IMF Structural Adjustment Programs to Economic, Social, and Cultural Rights: The Argentine Case*

Revisited, 24 MICHIGAN JOURNAL OF INTERNATIONAL LAW 577, 583 (2003) (citing studies showing that structural adjustment lending by the World Bank and the IMF in the 1980s failed to improve growth and investment);

- Richard Peet, UNHOLY TRINITY: THE IMF, WORLD BANK AND WTO 56 (2003) (arguing that the results of IMF operations have been disastrous for working people);
- Steven L. Schwarcz, “*Idiot’s Guide*” to Sovereign Debt Restructuring, 53 EMORY LAW JOURNAL 1189 (2004) (expressing concern over the moral hazard of IMF member states subsidizing, in effect, defaulting states and those states’ creditors);
- *Sixty Years On: The Bretton Woods Twins Are Useful But Need Better Parents*, FINANCIAL TIMES, July 3, 2004, at 12 (criticizing the IMF for overlending, as well as for its democracy deficit);
- Joseph E. Stiglitz, *Failure of the Fund: Rethinking the IMF Response*, 23 HARVARD INTERNATIONAL REVIEW 14, 14 (2001) (stating that some of the IMF’s policies “actually contributed to instability”, in that the IMF’s premature call for “capital and financial market liberalization throughout the developing world” has been “a central factor not only behind the most recent set of crises but also behind the instability that has characterized the global market over the past quarter century”);
- Mark Weisbrot, *Another IMF Crash*, THE NATION, Dec. 10, 2001, at 6, 7–8 (claiming that “the neoliberal program of the IMF and the World Bank . . . has contributed to a substantial decline in economic growth over the past twenty years throughout the vast majority of low- and middle-income countries”).

Numerous expressions of the “bad medicine” criticism came in the wake of the Asian financial crisis. See, for example:

- Walden Bello, DEGLOBALIZATION: IDEAS FOR A NEW WORLD ECONOMY (2004) (holding the IMF responsible for the Asian financial crisis);
- Ross P. Buckley, *A Tale of Two Crises: The Search for the Enduring Reforms of the International Financial System*, 6 UCLA JOURNAL OF INTERNATIONAL LAW AND FOREIGN AFFAIRS 1, 42–43 (2001) (referring to the IMF’s bailouts of Asian debtors as “highly counterproductive” because the bailouts “rewarded creditors for investing in the most destabilizing form of debt”, and concluding that “[t]he IMF made the wrong call” in providing the bailouts “because it was viewing the situation from the wrong perspective”);
- Istvan Dupai, *Criticism of the IMF and the World Bank* (Oct. 4, 2000) (endorsing the view that “the IMF increased panic [in the crisis-hit Asian countries] with its public announcements that everything was wrong” and that more generally “IMF programs often incite financial panics”), at <http://www.dupai.com/allforstudents/docs/00000004.html>;
- Frontline, *The Crash: Views and Comments on the IMF* (1999) (quoting Jeffrey D. Sachs’ assertion that in emphasizing the seriousness of

financial conditions in Asia, “the IMF helped to detonate the Indonesian crisis” and took “the same kinds of provocative steps” in Korea, and overall “made a bad mistake”), at <http://www.pbs.org/wgbh/pages/frontline/shows/crash/imf/views.html>;

- Khor, *supra* (endorsing the view that “by imposing a tough economic squeeze in affected [Asian] countries, the IMF risks undermining, not restoring, investor confidence”, that “by insisting on faster liberalisation of capital inflows, the IMF may exacerbate financial vulnerability,” and that the IMF-led “bailouts may encourage further folly, mainly by lenders”);
- Catherine H. Lee, *To Thine Ownself Be True: IMF Conditionality and Erosion of Economic Sovereignty in the Asian Financial Crisis*, 24 UNIVERSITY OF PENNSYLVANIA INTERNATIONAL JOURNAL OF ECONOMIC LAW 875 (2003) (criticizing the IMF’s alleged destruction of state sovereignty and its alleged “one size fits all” approach);
- Stiglitz, *supra*, at 15 (referring to a “general consensus that the IMF pursued excessively contractionary fiscal policies” in responding to the Asian crisis, “and that the manner in which it handled financial-sector restructuring, at least in Indonesia, was a dismal failure”);
- Kevin Watkins, Oxfam International, *The IMF: Shot By Both Sides* (Apr. 2000) (referring to “the disastrous impact of IMF programmes in East Asia”, attributable to the fact that “IMF budget targets and their counterpart of high interest rates can have the effect of undermining the investment on which long-run growth and poverty reduction depend”) (earlier on <http://www.bicusa.org> Web site, now on file with author).

Other expressions of the “bad medicine” criticism came during and after economic crises in Argentina and Russia. See, for example:

- John V. Paddock, Comment, *IMF Policy and the Argentine Crisis*, 34 UNIVERSITY OF MIAMI INTER-AMERICAN LAW REVIEW 155, 158–159 (2002) (complaining that “the conditions imposed by the IMF on Argentina did not address the causes of the crisis, but . . . served to encourage the nation to adopt the Washington Consensus”, a formula of economic and financial policies that Paddock says amounts to a “one-size-fits-all program” that the IMF has applied to Argentina, Mexico, Russia, and Asian countries despite differences in the crises faced by all those countries);
- Adam Thomson, *IMF Was ‘Too Lenient’ Over Argentina’s Deficits as Economy Headed for Crisis*, FINANCIAL TIMES, July 28, 2004, at 9 (finding that the IMF was too lenient with its procedures in Argentina);
- Weisbrot, *supra*, at 7 (condemning the IMF in each of those crises for “burden[ing] a country with billions of dollars of debt in order to prop up an overvalued currency” and for proving itself “incapable of learning from repeated failures”).

For a recent assessment of IMF policy prescriptions based on detailed economic analysis, see generally:

- James Raymond Vreeland, *THE IMF AND ECONOMIC DEVELOPMENT* (2003), esp. at 152 (concluding that IMF programs “hurt economic growth and exacerbate income inequality”).

Criticism #1-2—Distributional and Social Injustice

Synopsis: “The economic and financial policies that the IMF insists on create distributional inequities and ignore the social aspects of a country’s well-being”.

For examples in the literature of writings that refer to this criticism generally, see:

- Sarah Anderson, *The IMF and the World Bank’s Cosmetic Makeover*, *DOLLARS & SENSE*, Jan./Feb. 2001, at 30, 30–31 (claiming that the IMF and the World Bank “have thrown millions of people deeper into poverty by promoting the same harsh economic reforms [to various countries] . . . regardless of local culture, resources, or economic context”, offering specific examples of how IMF-imposed policies have hurt education, health, and environmental protection” in Haiti and Brazil, and referring to “a harsh IMF reform program [in Ecuador] that shifts the country’s economic crisis onto the backs of the poor”), available at <http://www.dollarsandsense.org/archives/2001/0101anderson.html>;
- Mac Darrow, *BETWEEN THE LIGHT AND SHADOW: THE WORLD BANK, THE INTERNATIONAL MONETARY FUND AND INTERNATIONAL HUMAN RIGHTS LAW* 52 (2003) (finding IMF interest in human rights standards far from its focus);
- Michael O. Folorunso, *IMF: The Big Bad Wolf*, at <http://www.gamji.com/NEWS2154.htm> (contending that the IMF and the World Bank “want to impoverish the people”, that IMF policies contribute to the fall of school attendance and healthcare, and that wherever the IMF has intervened, it has “left a giant foot print of a destroyed economy, joblessness [and] more poverty than when they came in”);
- Frontline, *The Crash: Views and Comments on the IMF* (1999) (quoting Jeffrey D. Sachs’ assertion that the IMF’s action in the Asian financial crisis “shift[ed] the attention away from the real facts and from the real world that people live in” and that the IMF is “not understanding that . . . [its] actions are having such a disastrous effect on the real economy, on the jobs, the production, the exports, and the living standards of the people”);
- *Id.* (quoting Jeffrey Garten’s assertion, in evaluating the IMF’s handling of the Asian financial crisis, that “the social cost, the cost in terms of unemployment and, you know, the sheer human misery that is created—it was too much”);
- Gopal Garuda, *Lender of Last Resort: Rethinking IMF Conditionality*, 20 *HARVARD INTERNATIONAL REVIEW* 36, 38 (1998) (citing a study concluding that IMF-supported adjustment programs “tended to increase the percentage of people below the poverty line in sub-Saharan Africa by 10 to 15 percent”);

- Arthur MacEwan, *Economic Debacle in Argentina: The IMF Strikes Again*, DOLLARS & SENSE, Mar./Apr. 2002, at 22, 24 (claiming that “IMF policies . . . often lead to . . . growing inequality” and “have a severe negative impact on low-income groups” because they increase unemployment and gut social programs);
- David Moberg, *How to Fix the IMF; First, Do No Harm*, IN THESE TIMES, May 15, 2000, at 9, 10 (complaining that “[t]he IMF pays no attention to the distribution of income and wealth” despite studies that show a link between lower levels of income inequality and higher levels of growth in nations around the world);
- Jason Morgan-Foster, Note, *The Relationship of IMF Structural Adjustment Programs to Economic, Social, and Cultural Rights: The Argentine Case Revisited*, 24 MICHIGAN JOURNAL OF INTERNATIONAL LAW 577, 646 (2003) (asserting that the IMF is, by imposing structural adjustment requirements, preventing states from meeting some of the obligations they have under human rights treaties to provide for the economic, social, and cultural rights of their people);
- Heiner Thiessen, *Running on Empty*, ECOLOGIST, Nov. 2002, at 39, 41 (stating that the IMF’s structural adjustment programs adopted by Senegal at the insistence of the IMF has “driven most of [Senegal’s] small farmers out of business”, has “undermined food security”, has caused hunger and malnutrition to rise, has driven the unemployment rate from 25 percent to 44 percent, and has caused a rise in disease and mortality rates);
- Kevin Watkins, Oxfam International, *The IMF: Shot By Both Sides* (Apr. 2000) (claiming that “the IMF has a disastrous record in sub-Saharan Africa” in that “[c]onditions attached to its loans have destroyed livelihoods on an epic scale, [and] placed basic health and education services beyond the reach of millions of poor households”, and citing a recent IMF survey showing that twelve of sixteen African countries implementing IMF programs “had cut spending on basic education”) (earlier on <http://www.bicusa.org> Web site, now on file with author);
- Mark Weisbrot, *Another IMF Crash*, THE NATION, Dec. 10, 2001, at 6, 7 (claiming that under IMF bailouts, “the people, especially the poor, are tossed overboard”);
- Carol Welch, *What’s Wrong with the International Monetary Fund?*, in CITIZEN’S GUIDE TO INTERNATIONAL FINANCIAL INSTITUTIONS I (CEE Bankwatch Network ed., n.d.) (asserting that IMF policies “hurt the poor and exacerbate social inequality” by requiring governments to cut spending on social programs and increase charges for social services and that IMF policies “also hurt workers around the world” by leading to an abolition of minimum wage and collective bargaining laws), available at <http://www.bankwatch.org/vademecum/ifis/wbgrp/cgimf.pdf>;
- G. Pascal Zachary, *IMF: Kill it or Keep it?*, IN THESE TIMES, May 15, 2000, at 8, 9 (criticizing “the IMF’s notorious practice of conditioning loans on the imposition of cuts in welfare, wages and credit”), available at

<http://www.inthesetimes.com/issue/24/12/zachary2412.html>;

- Adam Zwass, GLOBALIZATION OF UNEQUAL NATIONAL ECONOMIES: PLAYERS AND CONTROVERSIES 248–249 (2002) (highlighting the failures of the IMF and other GEOs to prevent or even narrow the widening chasm between the ever-richer North and the poverty-ridden South).

Some critics emphasize other types of social damage, including environmental damage, allegedly done under IMF-imposed policies. In this respect, see:

- Istvan Dupai, *Criticism of the IMF and the World Bank* (Oct. 4, 2000) (citing a study claiming that programs supported by the IMF and the World Bank led to over-exploitation of forests in Ghana), at <http://www.dupai.com/allforstudents/docs/00000004.html>;
- Jason Tockman, AMERICAN LANDS ALLIANCE, THE IMF: FUNDING DEFORESTATION 3 (Nov. 2001) (stating that IMF operations “have caused extensive deforestation” in numerous countries);
- Welch, *supra* (asserting that “[t]he IMF turns a blind eye to the economic and social value of natural resources” and that its policies lead countries to liquidate natural resources, to cut back on conservation programs, and to lower environmental standards).

For an assertion that the IMF’s policy prescriptions are founded on an ignorant misunderstanding of cultural differences between societies, see:

- Theissen, *supra*, at 39 (explaining that “Muslim life in sub-Saharan Africa involves a constant series of financial sacrifices, which peg individuals back to a natural state of cashlessness” and that IMF pressure on Senegal “to turn more and more of its agricultural land over to the production of cash crops for export” has created a cash economy that “has caused a new sense of poverty and marginalisation”).

Some critics view the IMF as dismissive of non-Western values not because of ignorance but because of an actual intention to subjugate peoples of other cultures. In this respect, see:

- Timothy A. Canova, *Global Finance and the International Monetary Fund’s Neoliberal Agenda: The Threat to the Employment, Ethnic Identity, and Cultural Pluralism of Latina/o Communities*, 33 U.C. DAVIS LAW REVIEW 1547, 1549, 1562 (2000) (arguing that the IMF “systematically subordinates entire nations of color” and urging that “[t]he IMF’s structural adjustment punishment should be seen as a direct threat to Latin American cultural values”).

For a wide-ranging set of attacks on the IMF, including several focusing on social concerns, see generally:

- DEMOCRATIZING THE GLOBAL ECONOMY (Kevin Danaher ed., 2001).

Criticism #1-3—IMF Trampling of National Sovereignty

Synopsis: “In imposing conditionality on its loans, the IMF tramples on national sovereignty—not just in economics but increasingly in other areas of state autonomy”.

For examples in the literature of some criticisms along these lines, see:

- Saladin Al-Jurf, *Good Governance and Transparency: Their Impact on Development*, 9 *TRANSNATIONAL LAW AND CONTEMPORARY PROBLEMS* 193, 206 (1999) (recounting, in the context of anti-corruption initiatives, the criticisms that “the World Bank and IMF are perpetuating ‘new colonialism,’ where Western economic and cultural values are imposed upon emerging economies at the price of their sovereignty” and that “the World Bank and the IMF have failed to recognize that their programs cross the bounds of simple economic reform and encroach upon the sovereignty of member nations”);
- David Asp, *Argentina’s Mystery of Capital: Why the International Monetary Fund Needs Hernando de Soto*, 12 *MINNESOTA JOURNAL OF GLOBAL TRADE* 383 (2003) (citing the allegation that the IMF intrudes on state sovereignty);
- Graham Bird, *Reforming the IMF: Should the Fund Abandon Conditionality?*, 7 *NEW ECONOMY* 214, 214 (2000) (noting that “[s]ome observers see IMF conditionality as overly intrusive” and that the implication of this “is that countries turning to the Fund are losing their national sovereignty over economic policy design”);
- Istvan Dupai, *Criticism of the IMF and the World Bank* (Oct. 4, 2000) (claiming that the IMF “intervenes into the internal affairs of [its member] countries” and that most developing countries “have given up too much of their autonomy”), at <http://www.dupai.com/all-forstudents/docs/00000004.html>;
- Catherine H. Lee, *To Thine Ownself Be True: IMF Conditionality and Erosion of Economic Sovereignty in the Asian Financial Crisis*, 24 *UNIVERSITY OF PENNSYLVANIA JOURNAL OF INTERNATIONAL ECONOMIC LAW* 875 (2003) (criticizing the IMF’s alleged destruction of state sovereignty and its alleged “one size fits all” approach);
- Jedediah Purdy, *A World of Passions: How to Think About Globalization Now*, 11 *INDIANA JOURNAL OF GLOBAL LEGAL STUDIES* 1 (2004) (explaining criticisms asserting that the IMF acts in a “quasi-imperial role in dictating domestic policy to governments that have little or no effective choice in the matter”);
- Mary C. Tsai, *Globalization and Conditionality: Two Sides of the Sovereignty Coin*, 31 *LAW & POLICY OF INTERNATIONAL BUSINESS* 1317, 1318, 1329 (2000) (asserting that “globalization and [IMF and World Bank] conditionality represent a threat to state sovereignty” and positing that IMF and World Bank conditionality, when coupled with global economic integration, have placed “sovereignty . . . in a more precarious position than ever before”).

Criticism #1-4—IMF Secrecy and Opaqueness

Synopsis: “The IMF is a closed, non-transparent organization that operates in secret, despite its insistence on transparency in the governments of its members”.

For examples in the literature of some criticisms of the IMF along these lines, see:

- Andrew Balls and George Parker, *Europe Likely to Select Candidate by Next Week for IMF Vacancy*, FINANCIAL TIMES, Apr. 17, 2004, at 8 (discussing the concern over the lack of transparency in the IMF);
- Istvan Dupai, *Criticism of the IMF and the World Bank* (Oct. 4, 2000) (endorsing the view that “all IMF documents, instead of being confidential, should be made public and thereby open to public scrutiny and debate” and that “[p]ast IMF programs should be formally reviewed and evaluated by independent experts”), at <http://www.dupai.com/allforstudents/docs/00000004.html>;
- Michael O. Folorunso, *IMF: The Big Bad World*, at <http://www.gamji.com/NEWS2154.htm> (claiming that the IMF and the World Bank require nations “to sign secret agreements”);
- Martin Khor, *IMF Policies Make Patient Sicker, Say Critics*, THIRD WORLD ECONOMY No. 176, n.p. (Jan. 1–15, 1998) (criticizing the IMF for “work[ing] in secret, drawing up policies for the 80 countries under its control, largely without their participation and without the knowledge of the world”, and operating with an “almost total lack of ‘transparency’ in decisions and decision-making process”), at <http://www.asienhaus.org/asiancrisis/imfasiakhor4.htm>;
- Joseph E. Stiglitz, *Failure of the Fund: Rethinking the IMF Response*, 23 HARVARD INTERNATIONAL REVIEW 14, 14 (2001) (stating that “the IMF conducts much of its business behind closed doors, without transparency”);
- Marijke Torfs, *Reining in the IMF: The Case for Denying the IMF New Funding and Power*, MULTINATIONAL MONITOR, Jan.–Feb. 1998, at 21, 23 (pointing out that a substantial change in IMF disclosure policies, occurring after the enactment of 1994 legislation in the US Congress regarding the US contribution to the IMF’s Enhanced Structural Adjustment Facility, represents “progress, but not a panacea”, as the available documents provide only “a flavor of the nature of the program[s]” promoted by the IMF);
- Ian Vasquez, *The IMF: Bad Watchdog with a Bad Attitude* (Mar. 16, 1998) (complaining that “even as the IMF insists on full and accurate information [from Asian governments], it remains one of the world’s most secretive bureaucracies”), at <http://www.cato.org/dailys/3-16-98.html>;
- Carol Welch, THE IMF AND GOOD GOVERNANCE 2 (Interhemispheric Res. Ctr. & Inst. for Policy Studies, Foreign Policy in Focus No. 33, Oct. 1998) (claiming that “the IMF is still too secretive” and that because “[m]ost of the loan documents that the IMF negotiates with

its borrowing members are not available to the public . . . the citizens of an affected country have little way of knowing which policies the IMF is prescribing and which policies are coming from their government”), available at <http://www.fpiif.org/pdf/vol3/33ifimf.pdf>;

- *Id.* at 3 (complaining that “[t]he IMF Executive Board essentially operates behind closed doors and makes agreements by consensus” rather than by formal, transparent voting, and that “board minutes are made available only after a 30-year time lag”);
- Carol Welch, *What’s Wrong with the International Monetary Fund?*, in CITIZEN’S GUIDE TO INTERNATIONAL FINANCIAL INSTITUTIONS 1 (CEE Bankwatch Network ed., n.d.) (complaining that although “the IMF makes more information about its programs publicly available than it used to, it remains secretive” and that “Board of Directors deliberations are secret and many staff reports and assessments are private”), available at <http://www.bankwatch.org/vademecum/ifis/wbgrp/cgimf.pdf>.

Criticism #1-5—The IMF Democracy Deficit

Synopsis: “Controlled by a handful of rich countries, the IMF is an unaccountable autocracy in which the people most affected by its operations have much too little chance to participate”.

For examples in the literature of some criticisms of the IMF along these lines, see:

- Sarah Anderson, *The IMF and the World Bank’s Cosmetic Makeover*, DOLLARS & SENSE, Jan./Feb. 2001, at 30, 31 (reporting that NGOs trying to enter into consultations with the IMF and the World Bank have found “either a complete lack of public consultation or mere public relations stunts that excluded groups more critical of Bank and Fund policies”), available at <http://www.dollarsandsense.org/archives/2001/0101anderson.html>;
- George B. N. Ayittey, *The Rule of Big Men or the Rule of Law?*, ECONOMIST, July 17, 2004, available at 2004 WL 620167512 (criticizing IMF for supporting anti-democratic governments);
- George B. N. Ayittey, *How the Multilateral Institutions Compounded Africa’s Economic Crisis*, 30 LAW AND POLICY IN INTERNATIONAL BUSINESS 585 (1999) (same);
- Walden Bello, *DEGLOBALIZATION: IDEAS FOR A NEW WORLD ECONOMY* (2004) (criticizing the IMF and the other GEOs for sidestepping democracy);
- Istvan Dupai, *Criticism of the IMF and the World Bank* (Oct. 4, 2000) (pointing out that “India and China have smaller votes than the Netherlands, although . . . their population is about 60 times larger”), at <http://www.dupai.com/allforstudents/docs/00000004.html>;
- Sebastian Edwards, *Europe Should Give Up Its Hold on the Fund*, FINANCIAL TIMES, Mar. 17, 2004, at 19 (critically discussing the “tradition” of the IMF leader coming from Europe);

- Catherine H. Lee, *To Thine Ownself Be True: IMF Conditionality and Erosion of Economic Sovereignty in the Asian Financial Crisis*, 24 UNIVERSITY OF PENNSYLVANIA JOURNAL OF INTERNATIONAL ECONOMIC LAW 875 (2003) (calling for a reallocation of voting power in the IMF “to allow developing countries to have a meaningful voice in the determination of policies”);
- S. Mansoob Murshed, *Perspectives on Two Phases of Globalization*, appearing as chapter 1 in S. Mansoob Murshed, ed., *GLOBALIZATION, MARGINALIZATION AND DEVELOPMENT* 1, 4 (2002) (citing the allegedly undemocratic rules enforced by the IMF and other GEOs);
- Jedediah Purdy, *A World of Passions: How to Think About Globalization Now*, 11 INDIANA JOURNAL OF LEGAL STUDIES 1 (2004) (explaining criticisms that the IMF acts in a “quasi-imperial role in dictating domestic policy to governments that have little or no effective choice in the matter”);
- Cyrus Rustomjee, *Why Developing Countries Need a Stronger Voice*, *FINANCE & DEVELOPMENT*, Sept. 2004, at 21 (asserting that low-income countries, particularly in sub-Saharan Africa have too small a voice in the IMF, and proposing changes to address that problem);
- *Sixty Years On: The Bretton Woods Twins Are Useful But Need Better Parents*, *FINANCIAL TIMES*, July 3, 2004, at 12 (criticizing the IMF for its democracy deficit);
- Joseph E. Stiglitz, *Failure of the Fund: Rethinking the IMF Response*, 23 HARVARD INTERNATIONAL REVIEW 14, 17 (2001) (complaining that the IMF’s “leaders are seldom held accountable” for the policies they pursue);
- Kevin Watkins, Oxfam International, *The IMF: Shot By Both Sides* (Apr. 2000) (asserting that “the Fund’s ‘one dollar, one vote’ constitution” results in a “democratic deficit of staggering proportions” and asserting that “it is outrageous for the US and other industrial countries to preach the virtues of democracy and accountability in poor countries, while practicing the vices of oligarchy in the IMF”) (earlier on <http://www.bicusa.org> Web site, now on file with author);
- Carol Welch, *What’s Wrong with the International Monetary Fund?*, in *CITIZEN’S GUIDE TO INTERNATIONAL FINANCIAL INSTITUTIONS* (CEE Bankwatch Network ed., n.d.) (criticizing the IMF because it “only responds to a select group of interests in its borrowing countries” and “negotiates programs with a handful of government officials” that “excludes environmental ministries and members of parliament”, and concluding that “[t]his process is fundamentally undemocratic”), available at <http://www.bankwatch.org/vademecum/ifis/wbgrp/cgimf.pdf>).

Criticism #1-6—IMF Mission Creep

Synopsis: “As both a legal and a practical matter, the IMF has overstepped its authority and its competence in providing bailouts and adopting policies on a proliferation of topics”.

For examples in the literature of some criticisms of the IMF along these lines, see:

- Celeste Boeri, *How to Solve Argentina's Debt Crisis: Will the IMF's Plan Work?*, 4 CHICAGO JOURNAL OF INTERNATIONAL LAW 245, 245–247 (2003) (criticizing a proposal for the IMF to establish a sovereign bankruptcy system because assuming such a role could, as a practical matter, conflict with its other functions);
- David Moberg, *How to Fix the IMF; First, Do No Harm*, IN THESE TIMES, May 15, 2000, at 9, 11 (noting that “there is growing clamor . . . to drastically scale back the IMF to focus on its original mission of managing short-term currency problems” instead of “acting as enforcers for global capital”);
- Jason Morgan-Foster, Note, *The Relationship of IMF Structural Adjustment Programs to Economic, Social, and Cultural Rights: The Argentine Case Revisited*, 24 MICHIGAN JOURNAL OF INTERNATIONAL LAW 577, 631–632 (2003) (asserting that the international financial institutions should not have a role in protecting human rights, because the subject of human rights “is not mentioned in the institutions’ statutes, and promotion of human rights will require a much more active human rights policy operation than the institutions have been set up to handle”);
- Joseph E. Stiglitz, *Failure of the Fund: Rethinking the IMF Response*, 23 HARVARD INTERNATIONAL REVIEW 14, 16–18 (2001) (observing that the IMF’s mandate has changed from that of providing liquidity to “that of a bill collector for lending nations”, and recommending that the IMF “be restricted to crisis management” and that “[i]ts other functions should be given to other institutions”);
- James Tobin & Gustav Ranis, *Flawed Fund: The IMF's Misplaced Priorities*, THE NEW REPUBLIC, Mar. 9, 1998, at 16, 17 (arguing that “the IMF should stick to its original mission, saving its members from disasters due to short-term illiquidity” and not getting involved in “long-run structural and developmental issues”);
- Kevin Watkins, Oxfam International, *The IMF: Shot By Both Sides* (Apr. 2000) (criticizing IMF “mission creep”, and observing that now “the IMF’s loan conditions cover everything from monetary policy to rapid trade liberalisation, financial deregulation, and privatisation”) (earlier on <http://www.bicusa.org> Web site, now on file with author);
- Carol Welch, THE IMF AND GOOD GOVERNANCE 2 (Interhemispheric Res. Ctr. & Inst. for Policy Studies, Foreign Policy in Focus No. 33, Oct. 1998) (complaining that the IMF’s “mission creep” into the area of “good governance, taking up the issues of corruption, transparency, tax reform, and other domestic concerns” represents another example of “the IMF’s power grabs of the last several decades and entrenches the IMF in the position of giving development and stabilization advice even when its qualifications are highly dubious”), available at <http://www.fpiif.org/pdf/vol3/33ifimf.pdf>.

Criticism #I-7—Asymmetry in Obligations

Synopsis: “The IMF permits its rich member countries to insist that the poor borrowing member countries follow certain policies without pressuring the rich countries to follow those policies themselves”.

For examples in the literature of some criticisms of the IMF along these lines, see:

- *An Unequal World: Fair Trade is Needed to Eradicate Poverty*, GUARDIAN (LONDON), Apr. 13, 2002, n.p. (noting that “[w]hile goods from the developing world are kept out of western markets, poor nations are pressed by the International Monetary Fund and World Bank to open their markets too rapidly”), available at <http://www.financialtimes.com> and 2002 WL 18762058;
- Alan Beattie, *Raw Deal for Poor Nations Limits Backing for Free Trade*, FINANCIAL TIMES, Apr. 12, 2002, n.p. (noting that “while the [International Monetary] [F]und and [World] Bank have the ability via their lending programs to encourage—if not compel—liberalization in poor countries, they lack a similar lever with the Group of Seven leading industrial nations”), available at <http://www.financialtimes.com> and 2002 WL 18765849.

II. CRITICISMS OF THE MDBS

Criticism #II-1—Bad Economic and Financial Policies and Projects

Synopsis: “The MDBs promote a flawed *laissez-faire* economic model, conceive of ‘development’ too narrowly, and support bad projects that do not help the borrowing member countries”.

For examples in the literature of writings that refer to this criticism generally, see:

- Andrew Balls, *World Bank/IMF Plan to Reduce Poverty Criticized*, FINANCIAL TIMES, July 23, 2004, at 8 (finding the World Bank’s poverty reduction programs lacking in prioritization of development needs);
- Timothy A. Canova, Claire Moore Dickerson, and Katherine V.W. Stone, *Labor and Finance as Inevitably Transnational: Globalization Demands a Sophisticated and Transnational Lens*, 41 SAN DIEGO LAW REVIEW 109 (2004) (asserting that the World Bank’s economic policies have had little impact in improving people’s lives around the world);
- Celia Dugger, *World Bank Challenged: Are the Poor Really Helped?*, N.Y. TIMES, July 28, 2004, at A4 (criticizing the World Bank on grounds that its operations are not helping the poor);
- Raymond Baker and Jennifer Nordin, *How Dirty Money Binds the Poor*, FINANCIAL TIMES, Oct. 13, 2004, at 21 (condemning the World Bank for overlooking the global economy that conspires to keep poor countries poor, and for its narrow focus on corruption only);

- Michael Massing, *From Protest to Program*, THE AMERICAN PROSPECT, Summer 2001, at 2–3 (noting that the World Bank, mirroring the interests of its most powerful members, such as the USA, “continues to push on developing nations the same market reforms criticized in its *World Development Report [2000/2001]*”);
- Bruce R. Scott, *The Great Divide in the Global Village*, 80 FOREIGN AFFAIRS 160, 161 (2001) (noting that “the wealthy nations must . . . acknowledge that the ‘Washington consensus,’ which assumes that free markets will bring about economic convergence, is mistaken [and that those interests need to] abandon the notion that their own particular strategies are the best for all countries”);
- Edward Sussex, *Too Many Words and Not Enough Action on Assistance*, FINANCIAL TIMES, Oct. 21, 2004, at 14 (arguing that the World Bank and WTO have little concern for their impact on the poor).

Some of the oldest attacks on the World Bank focus on this criticism #II-1. For example:

- Walden Bello, David Kinley, and Elaine Elinson, *DEVELOPMENT DEBACLE: THE WORLD BANK IN THE PHILIPPINES* (1982) (asserting that World Bank operations in the Philippines were aimed at (1) “pacification”, to defuse rural and urban unrest, and (2) “liberalization”, to open up the country more completely to the flow of US capital and commodities);
- Vivencio R. Jose, ed., *MORTGAGING THE FUTURE: THE WORLD BANK AND IMF IN THE PHILIPPINES* (1982) (referring to the “evil power” of the World Bank and the IMF and their domination by the USA, with the ultimate goal of exploiting the natural, manpower, and financial resources of the Philippines);
- Cheryl Payer, *THE WORLD BANK: A CRITICAL ANALYSIS* (1982). This especially harsh attack of the World Bank, criticizing it for (among other things) its capitalist foundations, calls for the elimination of the World Bank, and the author has a colorful response to those who would criticize her for making such a demand without offering suggestions about what to put in its place: “[I]f the charges in this book of the damage done to the lives of poor and working people by the class-biased development of the World Bank have any validity, why should we need to put anything in its place? If I wrote an attack on the Mafia no one would demand to know what I would put in its place”. *Id.* at 357.

Criticism #II-2—Wrong Form of Financial Assistance

Synopsis: “MDB lending operations are anachronistic now that effective international capital markets exist; so MDB financing (if continued at all) should take the form of grants, not loans”.

For an example in the literature of some criticisms of the MDBs along these lines, see:

- JOINT ECONOMIC COMMITTEE, REPORT OF THE INTERNATIONAL FINANCIAL INSTITUTIONS ADVISORY COMMISSION 6 (Mar. 2000) [the Meltzer Report] (implying that development lending is no longer necessary because “[w]ith the development and expansion of global financial markets, capital provided by the private sector now dwarfs the volume of lending the development banks have done or are likely to do in the future”), and at 11 (suggesting that “[g]rants should replace the traditional Bank tools of loans and guarantees”).

A senior advisor to the chairman of the Meltzer Commission has elaborated on the proposal to replace MDB loans with grants. See:

- Adam Lerrick, *A Better Way to Lend A Hand*, 14 THE INTERNATIONAL ECONOMY 36 (2000) (downplaying concerns that focusing solely on grants would soon deplete MDB resources, and asserting that grants would overcome many shortcomings of MDB lending operations).

For observations by another commentator on this subject, see:

- George Soros, GEORGE SOROS ON GLOBALIZATION 100 (2002) (complaining that “the World Bank has only limited funds available for outright grants and technical assistance”, which would be more effective forms of World Bank assistance in some areas).

Criticism #11-3—Environmental Degradation

Synopsis: “MDB-financed projects too often have devastating effects on the environment, because the MDBs disregard environmental issues at both the project design and project implementation phases”.

For examples in the literature of some criticisms of the MDBs along these lines, see:

- Bank Information Center, *Hot Dividends: The World Bank’s Investments in Climate Changing Fossil Fuels*, Aug. 2000, at 1 (claiming that “[t]he World Bank is doling out billions annually in loans and guarantees to fossil fuel projects—the greatest contributor to climate change—in the developing world”) (earlier on <http://www.bicusa.org> Web site, now on file with author);
- Walden Bello, *DEGLOBALIZATION: IDEAS FOR A NEW WORLD ECONOMY* (2002) (citing the Chad-Cameroon pipeline, with World Bank involvement, as a major environmental disaster);
- Dana L. Clark, *The World Bank and Human Rights: The Need for Greater Accountability*, 15 HARVARD HUMAN RIGHTS JOURNAL 205 (2002) (asserting that notwithstanding its stated policies to the contrary, the World Bank engages in activities that undermine efforts to protect the environment and human rights);
- Forest Peoples Programme, *Forests and the World Bank: Concern Over Bank’s New Plans to Finance Commercial Logging Operations in all Types of Forests*, Sept. 2001, at 2 (stating that civil society organizations “are

alarmed that the World Bank is planning to reverse its current forest Policy by lifting its proscription against financing logging in primary tropical moist forests to enable Bank financing of commercial-scale logging operations in all types of forest”) (earlier on <http://www.bicusa.org> Web site, now on file with author);

- Mark Hertsgaard, *The World Bank and the Global Green Deal*, OXFAM EXCHANGE, Winter 2001, at 4 (asserting that “[t]ime and time again, [the World Bank] has financed gargantuan, ill-conceived projects whose anti-poverty effects are indirect at best and whose environmental consequences are downright disastrous”);
- Todd Roessler, *The World Bank’s Lending Policy and Environmental Standards*, 26 NORTH CAROLINA JOURNAL OF INTERNATIONAL LAW AND COMMERCIAL REGULATION 105 (2000) (contending that the World Bank has not consistently implemented its environmental protection policies and that it must do so in order to convince critics that it has learned from its past mistakes);
- Kay Treacle, *Accountability at the World Bank: What Does it Take? Lessons from the Yacyreta Hydroelectric Project, Argentina/Paraguay* (Sept. 1998) (noting that in the World Bank-financed Yacyreta Hydroelectric Project, the environmental assessment was not undertaken until the project was near completion and that, although several specific environmental concerns were to have been addressed before the opening of the dam, they never were), at http://www.bicusa.org/bicusa/issues/misc_resources/373.php;
- Shannon R. Wilson, *Sustainable Aquaculture: An Organizing Solution in International Law*, 26 THOMAS JEFFERSON LAW REVIEW 491 (2004) (citing criticisms of World Bank projects that allegedly polluted farm land).

Criticism #II-4—Human Rights Shortcomings

Synopsis: “The MDBs largely disregard human rights issues and act independently of any accepted human rights norms and institutions; and the MDBs fuel, not fight, public corruption”.

For examples in the literature of some criticisms of the MDBs along these lines, see:

- Bank Information Center, *Problem Project Alert #8: ADB Funded Thailand Samut Prakarn Province Wastewater Management Project*, at http://www.bicusa.org/bicusa/issues/bic_publications/advocsp.pdf (asserting that concerns expressed by the community to be affected by the AsDB-funded Samut Prakarn Wastewater Management Project—over the necessity of the project, the design of the project, the social and environmental ramifications of the project, the allegations of corruption surrounding the project, the lack of transparency and citizen participation in the project, and the violation of Bank policies and Thai laws surrounding the project—were submitted to the AsDB but were largely ignored);

- Bank Information Center, *The ADB-funded Samut Prakarn Province Wastewater Management Project in Thailand*, at http://www.bicusa.org/bicusa/issues/bic_publications/advocsp.pdf (same);
- John D. Giorciari, *The Lawful Scope of Human Rights Criteria in World Bank Credit Decisions: An Interpretive Analysis of the IBRD and IDA Articles of Agreement*, 33 CORNELL INTERNATIONAL LAW JOURNAL 331, 332–335 (2001) (citing the works of several scholars calling on the World Bank to take a more proactive role in the human rights arena);
- Dana L. Clark, *The World Bank and Human Rights: The Need for Greater Accountability*, 15 HARVARD HUMAN RIGHTS JOURNAL 205 (2002) (asserting that notwithstanding its stated policies to the contrary, the World Bank engages in activities that undermine efforts to protect the environment and human rights);
- Mac Darrow, *BETWEEN THE LIGHT AND SHADOW: THE WORLD BANK, THE INTERNATIONAL MONETARY FUND AND INTERNATIONAL HUMAN RIGHTS* 25 (2003) (finding the World Bank’s standards and instruments on human rights lacking);
- Shirin Ebadi and Amir Attaran, *When Politics Corrupts Money*, N.Y. TIMES, June 16, 2004, at A21 (criticizing the World Bank for not respecting human rights);
- Thomas M. Franck, *Are Human Rights Universal?*, 80 FOREIGN AFFAIRS 191, 204 (2001) (arguing that the World Bank should be proactively using loan conditionalities to protect human rights against the argument of cultural exceptionalism);
- Globalization Challenge Initiative, *Growing Danger of Economic Apartheid: How the World Bank Group’s Private Sector Development (PSD) Strategy Threatens Basic Service Provisions (Health, Education and Water), Debt Reduction and PRSP Processes*, Sept. 2001, at 1 (asserting that “[i]n country after country, efforts [through loan conditionalities] by the World Bank Group to privatize health, education, and water systems are pushing the costs of public services out of the reach of ordinary people”) (earlier on <http://www.bicusa.org> Web site, now on file with author);
- Korinna Horta, *Rhetoric and Reality: Human Rights and the World Bank*, 15 HARVARD HUMAN RIGHTS JOURNAL 227 (2002) (asserting that the World Bank has inappropriately made a disingenuous distinction by separating political and civil rights from economic and social rights and has improperly insisted that the former of these lies outside of its mandate);
- David Kinley and Junko Tadaki, *From Talk to Walk: The Emergence of Human Rights Responsibilities for Corporations at International Law*, 44 VIRGINIA JOURNAL OF INTERNATIONAL LAW 931 (2004) (finding the World Bank inappropriately reluctant to adopt a human rights perspective);
- Fergus MacKay, *Universal Rights or a Universe Unto Itself? Indigenous Peoples’ Human Rights and the World Bank’s Draft Operational Policy 4.10 on Indigenous Peoples*, 17 AMERICAN UNIVERSITY INTERNATIONAL LAW REVIEW 527, 529–530 (2002) (criticizing the World Bank for “openly

disregard[ing] a whole range of rights” in a way that “runs counter to mainstream thought about the nature of human rights and attendant international obligations”);

- Michael Massing, *From Protest to Program*, THE AMERICAN PROSPECT, Summer 2001, at 7 (noting that the World Bank should use conditionalities to improve socially useful categories like education, but it does not);
- Results Educational Fund, *World Bank Water Policies Undermine Public Health*, Sept. 2001, at 2 (noting that the World Bank imposes a policy of increased cost recovery on water services without protecting poor water consumers) (earlier on <http://www.bicusa.org> Web site, now on file with author);
- Rick Rowden, *The World Bank and User Fees*, Sept. 2001, at 1 (noting that the World Bank conditions loans upon the willingness of a borrowing country’s government to impose user fees on water, health and education services, effectively locking out the poorest people from accessing them) (earlier on <http://www.bicusa.org> Web site, now on file with author);
- Kay Treakle, *Accountability at the World Bank: What Does it Take? Lessons from the Yacyreta Hydroelectric Project, Argentina/Paraguay* (Sept. 1998), at n.p. (noting that in the Yacyreta Hydroelectric Project, concerns over the resettlement and compensation of displaced indigenous peoples were supposed to be addressed before the opening of the dam, but they never were).

For a careful examination of the relationship between the World Bank and international human rights law, see generally:

- Sigrun I. Skogly, *THE HUMAN RIGHTS OBLIGATIONS OF THE WORLD BANK AND THE INTERNATIONAL MONETARY FUND* (2001).

Questions about that relationship between the World Bank and international human rights are not new; they have been the subject of debate for many years. For a 1988 symposium on international development agencies, human rights, and environmental considerations, see:

- Symposium, *International Development Agencies (IDAs), Human Rights and Environmental Considerations*, 17 DENVER JOURNAL OF INTERNATIONAL LAW AND POLICY 29 (1988).

Criticism #II-5—MDB Trampling of National Sovereignty

Synopsis: “In imposing conditions on the rights of member countries to borrow, the MDBs violate the sovereignty of those countries, and in particular the principle of self-determination”.

For examples in the literature of some criticisms along these lines, see several of the works cited in part I of this Appendix, relating to the IMF, as many of critics apply the “trampling of national sovereignty” complaint to both of the Bretton Woods institutions.

In addition, for a discussion of criticisms along these lines, see:

- Kamal Malhotra, *Globalization, Private Capital Flows and the Privatization of Infrastructure*, Presentation at the “BOOT: In the Public Interest?” conference (Mar. 1998) (asserting that “[t]he weakening of the State’s role partly as a result of the economic policy advice of the World Bank and IMF . . . could reduce rather than enhance a government’s ability to enact and enforce effective regulation of the market in the interests of the poor and disadvantaged”). (available at <http://www.signposts.uts.edu.au/articles/Generic/Economy/410.html>);
- Martin Wolf, *Will the Nation-State Survive Globalization?*, 80 FOREIGN AFFAIRS 178, 184–185 (2001) (noting that globalization and the global institutions that regulate globalization, such as the World Bank, are “often [seen] as destroying [national] governments’ capacities to do what they want or need [to do]”).

Criticism #II-6—Weaknesses in Staffing and Management

Synopsis: “The MDBs are poorly managed, in part because (i) staff members are not properly accountable for their performance and (ii) staff hiring and promotion rest on inappropriate criteria”.

This criticism emerges mainly from my own experience and discussions with MDB officials. I am not aware of extensive treatment of this criticism in the pertinent literature, but:

- The Meltzer Report undertaken in 1999–2000 touches on one of the points incorporated into the summary of Criticism #II-6—the complaint that the MDBs have an “approval culture’ aimed at achieving yearly lending targets”, and that this gives “[i]ncentives to lend for lending’s sake” JOINT ECONOMIC COMMITTEE, REPORT OF THE INTERNATIONAL FINANCIAL INSTITUTIONS ADVISORY COMMISSION 75 (Mar. 2000);
- For a scathing condemnation of former World Bank president James Wolfensohn, touching on some elements of this criticism, see Stephen Fidler, *Who’s Minding the Bank?*, FOREIGN POLICY, Sept.–Oct. 2001, at 40;
- An internal memorandum from a recently-departed director of the Asian Development Bank asserted that the AsDB’s “expert staff is ‘thinly stretched, well beyond its overall capacity’” and complained that too many of the institution’s senior positions were “filled with civil servants ‘parachuted’ in by member governments such as Japan”. Shawn Donnan, *Ex-Director Lashes Out at ADB’s ‘Lack of Direction’*, FINANCIAL TIMES, Sept. 17, 2003, at 4.

Criticism #II-7—MDB Secrecy and Opaqueness

Synopsis: “The MDBs practice both documentary secretiveness and operational secretiveness, thereby remaining inappropriately hidden from scrutiny and insulated from external criticism”.

For examples in the literature of some criticisms of the MDBs along these lines, see:

- Bank Information Center, *The Ongoing Struggle for World Bank Transparency—The Outcome of the Information Disclosure Policy Review* (Nov. 4, 2001) (noting that the World Bank’s “unwillingness to subject Board meetings to public oversight will continue to undermine the credibility of the Bank’s governance process”), at http://www.bicusa.org/bicusa/issues/misc_resources/456.php;
- Bank Information Center, *Development Bank Transparency: Issues and Opportunities for 2002–2003*, Transparency Briefing (Mar. 2002) (discussing MDB disclosure policies), at <http://www.bicusa.org/bicusa/issues/TransparencyBriefing19Mar02.pdf>;
- Shalmali Guttal, *Disclosure or Deception? Multilateral Institutions and Access to Information*, Presentation at Conference on Access to Information (Mar. 2002) (concluding that the information the World Bank discloses is worthless except in its purpose to occupy the public with “sometimes interesting and largely irrelevant information while the Bank gets on with business as usual”) (transcript earlier on <http://www.bicusa.org> Web site, now on file with author).

Criticism #II-8—The MDB Democracy Deficit

Synopsis: “Controlled by a handful of rich countries and corporate interests, the MDBs are largely unaccountable to the people most affected by their operations”.

For examples in the literature of writings that refer to this criticism generally, see:

- Nathalie Bernasconi-Osterwalder & David Hunter, *Democratizing Multilateral Development Banks* (noting that recent protests “suggest that international financial institutions will continue to lose legitimacy unless they become more transparent and accountable to both the people affected by their projects and those whose tax money supports them”), in *THE “NEW PUBLIC”: GLOBALIZATION OF PUBLIC PARTICIPATION* 151 (2002), available at http://www.ciel.org/Publications/Democratizing_MDBs_NewPublic.pdf;
- Richard Falk and Andrew Strauss, *Toward Global Parliament*, 80 *FOREIGN AFFAIRS* 212, 212 (2001) (positing that “[o]ne crucial aspect of the rising disaffection with globalization is the lack of citizen participation in the global institutions that shape people’s daily lives”);
- S. Mansoob Murshed, *Perspectives on Two Phases of Globalization*, appearing as chapter 1 in S. Mansoob Murshed, ed., *GLOBALIZATION, MARGINALIZATION AND DEVELOPMENT* 1, 4 (2002) (citing the allegedly undemocratic rules enforced by the World Bank and other GEOs).

For a thoughtful discussion of the defects in the existing structure of accountability in the two Bretton Woods institutions, see generally:

- Ngairé Woods, *Making the IMF and the World Bank More Accountable*, 77 INTERNATIONAL AFFAIRS 83 (2001) (commenting that “[a]ccountability, in particular, has become the catchery of officials, scholars and activists in discussing the reform of the institutions”).

Two subsidiary strains of the “democracy deficit” criticism allege that MDBs give (i) too much attention or influence to corporate interests and (ii) too little attention or influence to NGOs and other citizens’ groups. For examples of the first of these points, see:

- Falk and Strauss, *supra*, at 215 (stating that “[t]hrough expanding trade and investment, business and banking leaders have . . . exercised extraordinary influence on global policy”);
- Michael Massing, *From Protest to Program*, THE AMERICAN PROSPECT, Summer 2001, at 3 (noting that the global regulatory structure, including the World Bank, has failed to regulate and control multinational corporations and their drive to exploit the poorest labor and most unprotected environments in order to maximize profits).

For examples of the second point—that MDBs pay too little attention to NGOs—see:

- Falk and Strauss, *supra*, at 214–215 (suggesting that MDBs incorporate NGOs into their institutions to serve as a “voice of the citizenry” and therefore help legitimize the MDBs);
- Massing, *supra*, at 6 (asserting that the MDBs should help the NGOs pressure national governments to reign in the multinational corporations through the use of conditionalities);
- The Development Gap, *Civil Society Engages World Bank in Assessment of Structural Adjustment Programs: Hundreds of Organizations to Hold Bank Accountable to Emerging Findings*, Sept. 2000, at 1 (noting that although the World Bank has encouraged its critics to participate in evaluating the impacts of its structural adjustment policies through the Structural Adjustment Policy Review Initiative, the World Bank “has yet to demonstrate any willingness to learn from the Initiative’s . . . reviews, much less integrate that learning in its policy development, programming and operations”) (earlier on <http://www.bicusa.org> Web site, now on file with author).

For a discussion of a specific defect found to exist in the weighted voting system at the World Bank—that is, the exceptionally large voting power of the USA (reflecting the size of its capital subscription)—see:

- Jennifer N. Weidner, *World Bank Study*, 7 BUFFALO HUMAN RIGHTS LAW REVIEW 193 (2001) (suggesting that the World Bank Inspection Panel and other possible checks on the influence of the USA is thus far inadequate and proposing that a special one-state-one-vote rule apply in the event that a single shareholder attempts to control World Bank policy on the basis of its investment in the institution).

For a more general criticism of the distribution of voting power in the World Bank, see:

- Christopher Swann, *Sixty Years On, and Still Contentious: Bretton Woods Institutions*, FINANCIAL TIMES, May 29, 2004, at 10 (finding lack of progress in addressing the inequitable method of state representation).

Criticism #II-9—MDB Mission Creep

Synopsis: “The MDBs are gripped by ‘policy proliferation’; they have diluted their commitment to true economic development by expanding their operations into areas in which they have no authority or competence”.

For examples in the literature of some criticisms of the MDBs along these lines, see:

- John D. Ciorciari, *The Lawful Scope of Human Rights Criteria in World Bank Credit Decisions: An Interpretive Analysis of the IBRD and IDA Articles of Agreement*, 33 CORNELL INTERNATIONAL LAW JOURNAL 331, 335 (2001) (citing some “[c]ritics of World Bank intervention in the human rights arena [who] . . . contend that the Bretton Woods institutions already overstep their proper bounds in dictating legal and political policies to less developed nations”);
- Jessica Einhorn, *The World Bank’s Mission Creep*, 80 FOREIGN AFFAIRS 22, 22, 24, 27, 29–32 (2001) (asserting that “[b]y now, [the World Bank’s] mission has become so complex that it strains credulity to portray the bank as a manageable organization” and describing the ways in which the World Bank has gradually widened its focus to take account of environmental sustainability, equitable income distribution, institutional strengthening, debt relief, poverty reduction, financial crisis management, banking regulation, corporate governance, gender disparities, narcotics, crime, and corruption);
- FIFTY YEARS AFTER BRETTON WOODS: THE FUTURE OF THE IMF AND THE WORLD BANK 42 (James M. Boughton & K. Sarwar Lateef eds., 1995) (recording observations by Manmohan Singh that “the World Bank of the future must return to a more focused set of priorities and activities” on ground that the proliferation of new objectives and policies “lead[s] to a too diffused pattern of lending, whose impact on development in the recipient countries is far from certain or beneficial”);
- *Sixty Years On: The Bretton Woods Twins Are Useful But Need Better Parents*, FINANCIAL TIMES, July 3, 2004, at 12 (criticizing the World Bank for having too many competing priorities and for having “petty, self-interested” shareholders).

Criticism #II-10—Asymmetry in Obligations

Synopsis: “As in the IMF, the MDBs’ rich member countries insist that the poor borrowing member countries follow certain policies, yet the rich countries can (and often do) fail to follow those policies themselves”.

For examples in the literature of some criticisms of the MDBs along these lines, see:

- Alan Beattie, *Raw Deal for Poor Nations Limits Backing for Free Trade: A Report by Oxfam Sounds a Critical Note on Liberalization Gains That are Skewed Towards Rich Countries*, FINANCIAL TIMES, Apr. 12, 2002 (noting that “while the [International Monetary] [F]und and [World] [B]ank have the ability via their lending programs to encourage—if not compel—liberalization in poor countries, they lack a similar lever with the Group of Seven leading industrial nations”), available at <http://www.financialtimes.com>;
- *An Unequal World: Fair Trade is Needed to Eradicate Poverty*, GUARDIAN (London), Apr. 13, 2002 (noting that “[w]hile goods from the developing world are kept out of western markets, poor nations are pressed by the International Monetary Fund and World Bank to open their markets too rapidly”), available at <http://www.financialtimes.com> and 2002 WL 18762058;
- *The Great Global Trade Robbery*, BANGKOK POST, Apr. 11, 2002 (accusing the G-7 nations of using the World Bank to “force open poor countries’ markets . . . [with policies that] the rich world has itself rejected”), available at <http://www.financialtimes.com> and 2002 WL 18163944.

III. CRITICISMS OF THE WTO

Criticism #III-1—Free Trade’s Fostering of Economic Harm

Synopsis: “The WTO’s central aim is wrong, because free trade does more economic harm than good to a national society and to the world as a whole”.

For one of the many examples in the literature of criticisms of the WTO along these lines, see:

- Fared Zakaria, *Some Real Street Smarts*, NEWSWEEK, July 30, 2001, at 25, 25 (condemning economic globalism, and trade liberalization in particular).

Criticism #III-2—Free Trade’s Distributional Injustice

Synopsis: “Even if free trade brings aggregate economic benefits, those benefits are not fairly distributed, either within a national economic system or among nations; and the WTO permits this injustice”.

For examples in the literature of some criticisms of the WTO and free trade along these lines, see:

- C. Fred Bergsten, *America’s Two-Front Economic Conflict*, FOREIGN AFFAIRS, Mar./Apr. 2001, at 16 (pointing out that globalization causes job and income losses in certain sectors);
- Ewell E. Murphy, Jr., *The Lessons of Seattle: Learning from the Failed Third WTO Ministerial Conference*, 13 TRANSNATIONAL LAWYER 273 (2000)

(explaining the possible economic injury that free trade causes to persons other than (1) workers in developing countries and (2) the well-to-do in developed countries).

Criticism #III-3—Free Trade’s Race to the Bottom

Synopsis: “The WTO’s free-trade agenda is wrong also because free trade causes a ‘race to the bottom’ in the regulatory standards for labor (worker safety and health) and environmental protection”.

For examples in the literature of some criticisms of the WTO and the free-trade “agenda” along these lines, see:

- Chris Baltimore, *US Power Deregulation May Cause Trade Woes*, available in posting of David Orr, david@livingrivers.net, to CONS-SPST-ENERGY-FORUM@Lists.SIERRACLUB.ORG (Nov. 8, 2001) (on file with the author) (referring to a 2001 US Energy Department report “that attributed increased power plant construction in Mexico to less stringent environmental regulations” and asserting more generally that pollution havens might emerge in some areas of less developed countries in order to attract coal plant construction);
- Lana Martin, *World Trade Organization and Environmental Protection: Reconciling the Conflict*, CURRENTS: INTERNATIONAL TRADE LAW JOURNAL, Winter 2000, at 69 (discussing the adequacy of the WTO’s environmental policies);
- *No Globalization without Representation!*, at <http://www.sierraclub.org/trade/summit/fact.asp> (asserting that the USA has weakened border food inspections and developed weak standards concerning imported agricultural pests);
- Margrete Strand, *Poisoned Workers and Poisoned Fields: Stop NAFTA’s Fast-Track Expansion to South America*, at <http://www.sierraclub.org/trade/environment/poisoned.asp> (stating that the US Environmental Protection Agency, in order to help US growers compete with surging imports, “has increased chemical risks to farmworkers by reducing a critical safety factor—the reentry period—the time between when pesticides are sprayed on crops, and when growers can order farmworkers to reenter the fields”).

Criticism #III-4—WTO Disregard for Labor and Environmental Values

Synopsis: “Even if free trade does not in itself cause a race to the bottom, the WTO fails to give adequate attention to environmental and labor concerns in its operations”.

For one of many examples in the literature of some criticisms of the WTO along these lines, see:

- David Kinley and Junko Tadaki, *From Talk to Walk: The Emergence of Human Rights Responsibilities for Corporations at International Law*, 44

VIRGINIA JOURNAL OF INTERNATIONAL LAW 931 (2004) (arguing that “human rights principles ought to play a more significant part in the WTO’s regulation of free trade”).

Criticism #III-5—WTO Secrecy and Opaqueness

Synopsis: “The WTO is a closed, non-transparent organization that operates in secret, inappropriately hidden from scrutiny and hence insulated from external criticism”.

For examples in the literature of some criticisms of the WTO along these lines, see:

- *Invisible Government*, N.Y. TIMES, Nov. 29, 1999, at A15 (presenting a full-page advertisement featuring a person with no facial features and warning that the WTO “is emerging as the world’s first global government [but] . . . was elected by no-one, . . . operates in secrecy, and [has a mandate to] . . . undermine the constitutional rights of sovereign nations”);
- Greg Palast, *The WTO’s Hidden Agenda*, Nov. 9, 2001, at <http://www.gregpalast.com/detail.cfm?artid=105&row=1> (reporting on “[t]hree confidential documents from inside the World Trade Organization Secretariat [that] . . . reveal the extraordinary secret entanglement of industry with government in designing European and American proposals for radical pro-business changes in WTO rules”);
- Arie Reich, *The WTO as a Law-Harmonizing Institution*, 25 UNIVERSITY OF PENNSYLVANIA JOURNAL OF INTERNATIONAL ECONOMIC LAW 321, 367–368 (2004) (noting claims that WTO rule-making is “often shrouded under a heavy veil of secrecy”).

Some complaints about WTO opaqueness date from very early in the life of the institution. For example, see:

- Steve Charnovitz, *Participation of Nongovernmental Organizations in the World Trade Organization*, 17 UNIVERSITY OF PENNSYLVANIA JOURNAL OF INTERNATIONAL ECONOMIC LAW 331 (Spring 1996) (asserting out that the WTO is as isolated from the public as the GATT had been, because the dispute settlement panels hold closed sessions, the WTO refuses to provide biographical information about panel members, all WTO committees hold closed sessions, NGOs cannot attend regular meetings of the General Council, and minutes are kept secret for two years).

Criticism #III-6—The WTO Democracy Deficit

Synopsis: “The WTO is undemocratic, both (i) in excluding participation by citizens and (ii) in having no allegiance to political authorities—and hence can impose its will arbitrarily on its member countries”.

Recent contributions to the literature relating to this criticism appear in the September 2004 issue of the *Journal of International Economic Law*, as part of a “Mini Symposium” carrying the title of “WTO Negotiator Meet the Academics—Challenge to the Legitimacy and Efficiency of the World Trading System”. Among the papers included in that symposium issue (which largely explain, more than endorse, certain criticisms about WTO accountability) are:

- Ernst-Ulrich Petersmann, *The ‘Human Rights Approach’ Advocated by the UN High Commissioner for Human Rights and by the International Labour Organization: Is It Relevant for WTO Law and Policy?*, 7 *JOURNAL OF INTERNATIONAL ECONOMIC LAW* 605 (2004) (citing concerns about the paucity of human rights considerations in WTO operations);
- Gary P. Sampson, *Is There a Need for Restructuring the Collaboration Among the WTO and UN Agencies So As To Harness Their Complementarities?*, 7 *JOURNAL OF INTERNATIONAL ECONOMIC LAW* 717 (2004) (citing criticisms claiming that WTO rules encroach on national sovereignty and impede the proper workings of democratically elected national governments);
- Gregory Shaffer, *Parliamentary Oversight of WTO Rule-Making: The Political, Normative, and Practical Contexts*, 7 *JOURNAL OF INTERNATIONAL ECONOMIC LAW* 629 (2004) (discussing possible creation of an inter-parliamentary WTO body).

Another set of symposium articles relating to the alleged WTO “democracy deficit”—and focusing particularly on the appropriateness of NGO participation in WTO operations—appeared in a University of Pennsylvania law journal in 1996. They include, among others:

- Steve Charnovitz, *Participation of Nongovernmental Organizations in the World Trade Organization*, 17 *UNIVERSITY OF PENNSYLVANIA JOURNAL OF INTERNATIONAL ECONOMIC LAW* 331 (Spring 1996) (discussing NGO participation in the policy work of the WTO and in the WTO dispute resolution process);
- G. Richard Shell, *The Trade Stakeholders Model and Participation by Nonstate Parties in the World Trade Organization*, 17 *UNIVERSITY OF PENNSYLVANIA JOURNAL OF INTERNATIONAL ECONOMIC LAW* 359 (Spring 1996) (discussing trade governance and asserting that the WTO needs to allow outsiders into the process to increase support for the institution).

For other works highlighting the “democracy deficit” criticism as it relates to the WTO, see:

- Jeffrey Atik, *Democratizing the WTO*, 33 *GEORGE WASHINGTON INTERNATIONAL LAW REVIEW* 455 (2001) (exploring “a particular style of legitimacy critique: the alleged lack of democracy within the WTO”);
- Andrew T. Guzman, *Global Governance and the WTO*, 45 *HARVARD INTERNATIONAL LAW JOURNAL* 303, 336–344 (2004) (identifying three types of “democracy problems” at the WTO: the lack of direct democratic

input, the risk of regulatory capture, and the fact that adjudication by WTO tribunals takes place without any opportunity for legislative or executive checks and balances);

- Arie Reich, *The WTO as a Law-Harmonizing Institution*, 25 UNIVERSITY OF PENNSYLVANIA JOURNAL OF INTERNATIONAL ECONOMIC LAW 321, 367–368 (2004) (noting “criticism against the WTO for not allowing NGOs . . . to participate in the legislative process”).

What Are the Global Economic Organizations?

I explained in Chapter One that there is a war going on—the Global Development War—over the kind of developmental ideology that will prevail in coming years. I examined various aspects of that war, including the “theater” in which it is being conducted, and have asserted that the global economic organizations (GEOs) sit at the very center of the (ideological) hostilities. Then in Chapter Two I offered a bare-bones summary of the criticisms that those GEOs have been subjected to in recent years. Now it is time to examine what those organizations are, so that we might assess those criticisms intelligently.

The IMF, the WTO, and the World Bank (along with its younger associates, the regional development banks) are the most powerful public inter-governmental institutions in the world economic order. The IMF and the World Bank, for example, wield enormous power over national economic policies and world financing flows because they lend (and trigger the lending of) massive amounts every year in their countries of operation—in the case of the World Bank, US\$23.6 billion in direct loan commitments last year alone. Likewise, the WTO deeply influences national economic policies and international trade flows by managing a regime of trade liberalization with “teeth” for enforcing the rules against nearly all countries of the world. The exercise of these various forms of economic power bears at least indirectly on most people in the world, including the three hypothetical individuals we were introduced to in Chapter One—Citizen Cynthia from Cincinnati, Farmer Feridun from Faruba, and Subsistence Samuel from Serengori.

It is this enormous power, of course, that in recent years has attracted such attention, much of it negative, toward the GEOs. In the following paragraphs I explore the GEOs—when and why they were created, how they have changed through time, and how they operate today. In doing so, I shall pay special attention to the legal and ideological foundations on which they rest. The aim of all this is to set the stage for a discussion of what role they play in the Global Development War and how (if at all) they can be reformed to meet the needs of today and tomorrow.

Before embarking on this survey, we should remind ourselves of the specific organizations that are included within the family of GEOs. They are identified in Box 3.1.

Box 3.1: The Global Economic Organizations (GEOs)

- The International Monetary Fund (IMF)—established in 1944 to address currency and other monetary concerns.
- The International Bank for Reconstruction and Development (IBRD)—established in 1944 primarily to finance the reconstruction of Europe following World War II, but also to assist in the economic development of other countries.
- The International Development Association (IDA)—established in 1960 to provide lower-cost loans to poorer countries unable to afford the lending terms offered by the IBRD. Technically speaking, the IBRD and the IDA together are referred to as the “World Bank”.
- The Inter-American Development Bank (IADB)—established in the late 1950s to focus additional development financing in the economically less developed countries of Latin America.
- The African Development Bank (AfDB)—established in the early 1960s to focus additional development financing in the economically less developed countries of Africa.
- The Asian Development Bank (AsDB)—established in the mid-1960s to focus additional development financing in the economically less developed countries of Asia.
- The European Bank for Reconstruction and Development (EBRD)—established in 1990 to focus additional financing in the countries of eastern and central Europe (and later the former Soviet republics) undergoing economic and political transformation following the Cold War.
- The World Trade Organization (WTO)—established in 1995 following the conclusion of the Uruguay Round of trade negotiations, thus succeeding to the responsibilities shouldered by the General Agreement on Tariffs and Trade (GATT) since 1947.

I. HISTORICAL SURVEY

Unfortunately, much of the criticism now being directed at the GEOs gives relatively little attention to their historical underpinnings. In my view, it is simply impossible to understand the current significance of the GEOs, let alone to offer well-grounded criticisms and suggestions about them,

without appreciating those historical underpinnings, both institutional and legal. For example, why are the 1960s of huge significance to the operations of World Bank and the other multilateral development banks (MDBs)? Because of decolonization and the rise of the developing world. Why is the IMF in the business of bailouts? Because of the breakdown of the par value system in the 1970s. Why does the WTO incorporate by reference (under a “single-package” approach) the score of Uruguay Round treaties? Because of atomization and regionalization of trade rules in the 1980s.

Let us start our survey of these and other elements of the GEOs’ history with a historical synopsis that sweeps all of the GEOs into a single story, before turning (in the later sections of this chapter) to a more detailed account (still somewhat simplified) of each institution.

A. Highlights in the GEO Timeline

The following timeline offers a chronological enumeration of some important dates in the founding and development of the GEOs. (Several of these dates, and some of the key trends they reflect, will then be developed in the text that follows the timeline.) In order to identify the three separate threads of the IMF, the MDBs, and the WTO, I have preceded each textual entry in the timeline with a notation of “EP” (economic policy, the principal focus of the IMF today), “TR” (trade regulation, the principal focus of the WTO), and “DF” (development financing, the principal focus of the MDBs).

- 1944
 - [EP] Chartering of the IMF at the Bretton Woods conference
 - [DF] Chartering of the IBRD at the Bretton Woods conference
- 1945
 - [EP] IMF Charter enters into force
 - [DF] IBRD Charter enters into force
- 1947
 - [TR] Adoption of the GATT
 - [TR] Completion of the Havana Charter, to establish the International Trade Organization—an effort later abandoned
 - [EP] IMF begins operations by providing financial credit to France
- 1952
 - [EP] IMF establishes standards and procedures for stand-by arrangements
- 1959
 - [DF] IADB Charter adopted
- 1960
 - [DF] IDA Charter adopted
 - [TR] GATT Council created to act between the sessions of the GATT contracting parties and to act as their delegate in decision making

- 1962 • [TR] Conclusion of the Dillon Round of GATT-sponsored trade negotiations
- 1963 • [DF] AfDB Charter adopted
- 1965 • [DF] AsDB Charter adopted
- [TR] GATT amended to add Part IV (“Trade and Development”)
- 1967 • [TR] Conclusion of the Kennedy Round of GATT-sponsored trade negotiations
- 1968 • [EP] First Amendment to IMF Charter approved, to create special drawing rights (SDRs)
- 1969 • [EP] First Amendment to IMF Charter enters into force
- 1971 • [EP] Par value system collapses when USA informs IMF that it will no longer freely buy and sell gold to settle international transactions
- [TR] GATT parties approve establishment of a Generalized System of Preferences, via a temporary-waiver decision (formalized in 1979)
- 1974 • [EP] IMF establishes Extended Fund Facility (EFF) to provide medium-term financing to members (longer term than stand-by arrangements)
- 1977 • [EP] IMF holds gold auction and transfers proceeds to Trust Fund to benefit economically less developed countries (LDCs)
- 1978 • [EP] IMF Second Amendment enters into force
- [EP] Final (i.e., most recent) stand-by arrangements with industrialized countries
- 1979 • [TR] Conclusion of the Tokyo Round of GATT-sponsored trade negotiations
- [TR] GATT parties approve more favorable tariff treatment for less developed countries, formalizing the Generalized System of Preferences
- 1981 • [EP] IMF starts using simplified basket of five currencies to set SDR value—US dollar, deutsche mark, French franc, Japanese yen, and pound sterling
- 1982 • [EP] Debt crisis erupts with announcements by Mexico and Brazil of serious problems servicing their foreign debt
- 1986 • [EP] IMF establishes Structural Adjustment Facility (SAF) to provide concessional (low-cost) financing for less developed countries
- 1987 • [EP] IMF establishes Enhanced Structural Adjustment Facility (ESAF) to expand its concessional financing for less developed countries
- 1990 • [EP] Third Amendment to IMF Charter approved, authorizing suspension of voting rights

- [DF] EBRD Charter adopted
- [TR] GATT panel issues *Tuna-Dolphin I* decision
- 1992 • [EP] Third Amendment to IMF Charter enters into force
- [EP] Procedures start for bringing former Soviet Republics into IMF membership
- 1993 • [TR] Conclusion of the Uruguay Round of GATT-sponsored trade negotiations
- [DF] World Bank Inspection Panel created.
- 1994 • [TR] GATT-1994, WTO Charter, and other Uruguay Round treaties enter into force
- 1995 • [EP] IMF approves largest-to-date stand-by arrangement—SDR 12.1 billion for Mexico
- [TR] WTO starts operations
- 1996 • [EP] IMF approves largest-to-date EFF arrangement—SDR 6.9 billion to Russia
- 1997 • [EP] IMF approves procedure for making public the IMF's views on members' economic and financial policies following Article IV consultations
- [EP] Asian financial crisis erupts, beginning with Thailand and spreading to Indonesia and Korea
- [EP] IMF approves largest-to-date stand-by arrangement—SDR 15.5 billion for Korea
- 1998 • [EP] Euro is adopted as a common currency by eleven European countries
- 1999 • [EP] Quotas of member countries in the IMF are increased (the most recent of several such increases) to about SDR 215 billion
- [EP] The IMF's ESAF is transformed into the Poverty Reduction and Growth Facility (PRGF)
- [TR] WTO Ministerial Conference in Seattle attracts thousands of street protestors criticizing WTO policies and economic globalization generally
- 2000 • [EP] IMF approves establishment of Independent Evaluation Office (IEO)
- 2001 • [TR] Doha Round of WTO-sponsored trade negotiations begins
- 2003 • [TR] WTO Ministerial Conference in Cancún collapses, partly over disagreements on agricultural subsidies
- 2004 • [TR] WTO delegates approve proposal for further reducing agricultural subsidies
- 2005 • [DF] World Bank President Paul Wolfowitz presses for additional attention to fighting corruption
- [IE] IMF Managing Director proposes a "Medium-Term Strategy" for modernizing the the IMF, includ-

- ing the institution’s surveillance work, its finances, and its governance
- [IE] IMF introduces Policy Support Instrument as a new instrument of assistance to members that do not currently need IMF financing but want IMF endorsement of economic policies
- 2006 • [TR] Doha round of trade talks are suspended due to continuing impasse over agriculture and other issues
- 2007 • [DF] World Bank President Paul Wolfowitz is forced to resign his position; despite pressure, US President Bush claims legitimacy of US authority to name a new President and selects Robert Zoellick
- [IE] IMF Managing Director Rodrigo de Rato, in a surprise move, steps down; despite pressure, European leaders claim legitimacy of their authority to name a new Managing Director and select Dominique Strass-Kahn

B. The Inter-War Period and Bretton Woods

1. Before 1944

Perhaps 1944 is the most important year in the history of the GEOs because it marks the birth of the first of those institutions. Indeed, it is with that year that I started the GEO timeline shown above. However, it is in the three decades just *preceding* 1944 that the main roots of these institutions can be found. It is worth recounting briefly what those roots are and what emerged from them in 1944.

As suggested above in Chapter One, the history of international organizations—or at any rate of those that can be regarded as forerunners of the GEOs—is a short one. We may consider that history to have started in about 1920. Although the first true public international organizations (having nation-states as members) are typically regarded as the International Telegraphic (now Telecommunications) Union and the Universal Postal Union, formed in 1865 and 1874, respectively, the two public international organization established following World War I—the League of Nations and the International Labour Organization (ILO)—stand out as setting the stage for the creation of numerous international organizations following World War II. Although the League had failed to meet its aim of “achiev[ing] international peace and security”,¹ its mere creation was significant because

¹ Covenant of the League of Nations, preamble. The Covenant of the League of Nations, by which that institution was created, constitutes Part I of the Treaty of Versailles, which was concluded on June 28, 1919. The Covenant came into force about six months later, on January 10, 1920.

of the breadth of issues that its founding states empowered it to handle. The ILO had a narrower scope but has had a longer life; and it can be regarded as the first major successful international economic organization, as it deals with issues arising directly out of the great economic and industrial revolutions of the late 1800s and early 1900s—labor standards and conditions.

Against this institutional backdrop—that is, the 1920s experimentation with important international organizations—must be set the economic conditions that developed in the years just following the conclusion of World War I. They were difficult times. They were marked by two national economic policy trends that help explain the proposals made at Bretton Woods and beyond. First, the major states engaged in competitive raising of tariff barriers, seeking economic gains at the expense of their trading partners—as explained in Box 3.2.

Box 3.2: A Glimpse at Tariffs and Tariff Hikes

A tariff is a tax on the importation of an article from one country into another. Such taxes can have two main effects and purposes: (1) to raise revenue for the state imposing the tariff and (2) to protect the domestic industry in that state against competition from goods produced in another state, by making the imported goods more expensive for consumers in the state imposing the tariff on those goods. In the 1920s, many states raised the levels of their tariffs. A premier example is the USA, which in the Smoot-Hawley Tariff Act of 1930 required that tariffs be paid on imported goods in amounts equivalent to 60 percent, 80 percent, and even 100 percent of the commercial value of those goods. Just to put that into perspective, consider the average tariff that applies today on goods coming into the USA—that average tariff is roughly 3 percent or 4 percent. A specific example would be automobiles, which attract a tariff (on importation into the USA) of about 2 percent today. A tariff of 100 percent (of the automobile's commercial value) would nearly double the price of the automobile when sold in the USA.

The high tariffs imposed in the 1930s tended to stifle international trade. So did the other main national economic policy trend that emerged in the years following World War I: competitive devaluations of national currencies. Official measures by a national government to reduce the value of that state's currency against the currencies of other countries typically have the effect of (1) making imported items more expensive for the residents of the devaluing state and (2) making items exported from that state more attractively priced for residents of other states against whose currencies the exporting state's currency has been devalued. This is explained in Box 3.3. In the 1930s, several states engaged in the practice of currency devaluation in order to gain these short-term advantages in the terms of

Box 3.3: A Glimpse at the Effects of Currency Devaluations

Although the effects of official currency devaluations are perhaps not as immediately obvious as the effects of tariff increases, they are still not really complicated. Consider this hypothetical example: Pierre is a wine merchant in Bordeaux who often sells wine to Peter, a restaurateur in Philadelphia. One bottle of Pierre's wine costs (for simplicity's sake) 40 francs. On March 15, 1935, the official exchange rate for changing French francs to US dollars, as established and maintained by the government of France, is 4 francs = \$1 (or, expressed differently, 1 franc = 25 US cents). If on that day Peter (who works in dollars, of course, as a resident of Philadelphia) has budgeted \$1,000 for purchasing wine, how many bottles of wine can he get? One hundred bottles of wine. He will use his \$1,000 to obtain the 4,000 francs he needs to buy 100 bottles of wine. (We are ignoring other costs here, such as transportation and tariffs.) Assume that on March 20, 1935, the French government changes the official exchange rate for changing French francs to US dollars. The new rate is 5 francs = \$1. This is a devaluation of the franc, because now one franc is worth only 20 US cents, not 25 cents as it was under the old exchange rate. Now how much wine can Peter purchase with the same budget of \$1,000? One hundred twenty bottles of wine: Peter's \$1,000 will yield 5,000 francs, which will buy him 120 bottles (120 bottles x 40 francs per bottle = \$1,000). From Peter's perspective, Pierre's wine just got significantly less expensive (\$8 per bottle instead of \$10 per bottle), so Peter's money will allow him to buy more of Pierre's wine. Hence, the devaluation of the franc is likely to encourage Peter and other wine purchasers in the USA to purchase more wine from France. Expressed more simply, devaluation of a country's national currency tends to increase that country's exports. In similar fashion, such a devaluation tends to reduce that country's imports. In order to illustrate this, let us imagine now that Pierre is also an importer: he regularly buys from a US seller special polished steel equipment for use in operating his vineyard. Before the devaluation, a \$100 purchase by Pierre required Pierre to use 400 francs; after the devaluation, a \$100 purchase by Pierre requires Pierre to use 500 francs. He cannot afford as much in imported goods after the devaluation. He (and other French importers) will tend to buy fewer imports.

trade with other countries. Such currency practices, and others, provided a drag on trade among states.

2. Three Proposed Solutions

By the 1940s, both of these two economic policy trends that had emerged in the inter-war years—competitive raising of tariff barriers and competitive devaluations of currencies—were regarded by many economists and political leaders as dangerous to world economic stability and

therefore to the peace that was to be sought after the conclusion of World War II. Similar danger was seen in another reality brought on by the war itself: much of Europe's infrastructure had been destroyed. Such destruction had also occurred in World War I, and (as noted in Chapter One) the reparations demands placed on Germany after that war were blamed by many people for the economic and political meltdown that had permitted Hitler and Nazism to rise and flourish in the 1930s.

In short, by the early 1940s, a general view had coalesced among influential policy makers that three international economic problems had to be addressed in a post-war world, in order to prevent a third world war from following on the heels of the second as quickly as the second had followed on the heels of the first. These economic problems related to (1) the imposition (by national governments) of high tariffs and other barriers to trade among states, (2) the manipulation (also by national governments) of national currency values, and (3) the economic distress of Europe following the devastation of World War II. Expressed from a more general and more positive perspective, those policy makers saw it as necessary (1) to encourage international trade by reducing tariff levels and other trade barriers, (2) to encourage international trade also by stabilizing and regulating national currency values, and (3) to foster economic and political stability in Europe by rebuilding its infrastructure quickly following the war.

For each of these tasks, an international organization was envisioned. For trade regulation, an International Trade Organization (ITO) was to be established; it would prescribe and enforce rules to limit tariff and non-tariff barriers to trade among states. For currency matters, the IMF was to be established; it would prescribe and enforce rules to stabilize currency rates and encourage currency convertibility among states. For rebuilding Europe, the IBRD was to be established; it would serve as a financial intermediary between investors in countries with wealth (mainly the USA following World War II) and the reconstruction projects in Europe.

The latter two of these two organizations—the IMF and the IBRD—were created at the July 1944 Bretton Woods conference² in the sense that their charters were drafted and approved by the delegates at that conference. Both of these charters, titled “Articles of Agreement”, took the form

² The Bretton Woods Conference was held at the Mount Washington Hotel, which is located (and still operating today) near Mount Washington in New Hampshire. Mount Washington itself (like the hotel and the conference it housed) is famous in its own right—mainly for its dangerously erratic weather. It reportedly holds the record for the highest wind gust directly measured at the Earth's surface. That record gust, at 231 miles per hour, occurred slightly more than ten years before the Bretton Woods Conference, on April 12, 1934.

of treaties that were later formally ratified by most of the states represented at the conference. The IMF Charter, once it gained such formal ratification, entered into force in late December 1945, and an inaugural meeting of the Board of Governors took place in March of the following year. The IBRD Charter also entered into force in late December 1945 on gaining the requisite number of ratifications.

The ITO was not established, either in 1944 or in the years immediately following. As explained below, the USA declined to agree to that organization's proposed charter, called the Havana Charter, and the gap created by the absence of the ITO was partially filled by the GATT.

C. The First Twenty-Five Years: From 1945 to 1970

Just as the quarter-century *preceding* 1944 contain the roots of the GEOs, so the quarter-century just *following* that year contain the main branches of the institutions. Whereas only two GEOs—the IBRD and the IMF—existed as of 1945 (when the charter of each institution entered into force as a formal matter of international law with the requisite number of ratifications), by 1970 four more were in place. As shown above on the GEO timeline, these institutions were the IDA, the AfDB, the IADB, and the ASDB.³ These will be described more fully below, in section III of this chapter.

In addition to these international organizations, another quasi-organization had come into existence—the GATT. As explained above, and as reflected in the above GEO timeline, the international organization that was envisioned for regulating international trade policy was the ITO; but plans to establish the ITO were aborted in the late 1940s, when the United States (for political reasons related to the Cold War) declined to agree to the Havana Charter that would have created the ITO.⁴ In its stead, the

³ Numerous other organizations were also formed in this period. Among them were two that are very closely associated with the IBRD and the IDA. The first one, the International Finance Corporation (IFC), focuses on lending to private-sector entities without national government guarantees (in contrast to the IBRD and the IDA, which make loans that have national governments as either borrowers or guarantors). The other one, the International Centre for the Settlement of Investment Disputes (ICSID), does not make loans; instead, it provides a forum for the arbitration of disputes raised by private-sector investors against the governments of countries in which those investors have invested. For various reasons, neither the IFC nor the ICSID is a subject of significant attention in this book.

⁴ Among the various reasons that have been cited for this rejection of the Havana Charter is one that is particularly pertinent to some recommendations I make later in this book: the Havana Charter contained what was regarded as too broad a range of goals besides trade liberalization—goals reflected in provisions relating to full employ-

GATT, originally simply a treaty intended to govern the transitional period leading to the existence of the ITO, took on the trappings of an international organization itself, without such status as a formal matter. In this capacity the GATT served as the triggering influence for several rounds of negotiations among the GATT parties regarding tariff levels and other aspects of trading rules and procedures.

Another noteworthy feature of the first quarter-century of the GEOs relates specifically to the IBRD—one of the two “twins” created at Bretton Woods. The IBRD’s assignment to help rebuild Europe, by serving as a financial intermediary for relatively rich investors (mainly in the USA), was in effect withdrawn from it only a few years after the Bretton Woods conference, when (among other things) the task of rebuilding Europe was assumed by the Marshall Plan initiated under the Truman Administration in the USA.⁵ Accordingly, the IBRD shifted its attention away from the “R” in its title (for reconstruction) and toward the “D” in its title (for the development of economies in poor countries), so that by the mid-1950s its new operations concentrated predominantly on the developing world.

In sum, the period from 1945 to 1970 saw the IBRD and the IMF begin their operations, saw the establishment of most of the other multilateral development banks (only the EBRD belongs to a later era), saw the GATT assume many of the responsibilities for trade regulation (despite its lack of institutional stature), and saw also the building of momentum and experience of all these organizations. For the most part, the organizations attracted little attention among the public at large, at least in the developed countries, before 1970.

ment, fair labor standards, double taxation, cooperation with the IMF, restrictive business practices, and commodity agreements. For my recommendations on linkages of treaty obligations, see sections IF, IIB, and IIIB of Chapter Six.

⁵ The Marshall Plan, named for Secretary of State George C. Marshall, was announced in the summer of 1947. Officially called the European Recovery Program, the undertaking involved some US\$13 billion in economic and technical assistance that the USA provided to aid in the recovery of European countries. By the time the plan had come to completion about half a decade after its inauguration, every participating state except Germany had grown well past pre-war levels. I have a personal appreciation for the Marshall Plan and its author, because for two years in the 1970s I benefitted from a Marshall Scholarship; my studies at Oxford University were funded by the British government via the Marshall Aid Commemoration Commission, established by Parliament as a way of thanking the USA for its generosity following the war.

D. The Second Twenty-Five Years: From 1970 to the Mid-1990s

1. *Reacting to Change*

As the above GEO timeline indicates, those institutions have undergone enormous change in the past three and a half decades. We shall examine those changes more closely in sections II, III, and IV of this chapter, but it is worth considering for a moment the overall character of those changes, beginning with the quarter-century from 1970 to the mid-1990s. The changes that occurred in the GEOs during that period may be seen as *reactions to a drastically changing world economy*. The IMF, for example, faced a threat to its very existence when the system of fixed exchange rates that the organization was supposed to monitor and enforce collapsed in the early 1970s; it reacted to this drastic change in various ways, including a redirection of its focus to debt issues. The World Bank also faced seismic shifts in the world economy as the Third World countries gained in influence (in part because of the seemingly intractable economic problems they posed to the international system) and as the institution realized that the rather oversimplified model of economic “reconstruction” on which it had been founded was ill-equipped to help build essentially new economies from whole cloth. The World Bank tried to react to this situation by progressively altering its operations, gradually moving deeper and deeper into the business of prescribing economic and financial policies for national governments.

As these dramatic changes, and reactions to them, were taking place in this period (the quarter-century from 1970 to the mid-1990s) in the areas of international development and the international monetary system, the international *trading* system was likewise undergoing a transformation. Trade flows increased dramatically, raising the profile of trading rules and forcing the GATT system to respond. The response came largely in the form of two massive rounds of trade negotiations—the Tokyo Round ending in 1979 and the Uruguay Round ending in 1993—that created a score of binding rules as well as a new institution, the WTO.

2. *Whither the Nation-State?*

In sum, the second quarter-century of the GEO “story” reveals the efforts of these institutions to react to drastic changes in the world economy. That period also saw another fundamental challenge arise—the challenge of figuring out what the future is, or should be, of the nation-state. Since about 1970, the GEOs have been involved in the painful dance between rich countries and poor countries—that is, the handful of industrially developed nations (referred to in Chapter One as the rich “top-sixth” countries) and the vast majority of less developed countries (the “middle

half” and the “bottom third” countries)—that has occupied the attention of political and economic leaders since scores of new countries emerged from colonial rule. This is often referred to as the tension between the “North” and the “South”, as reflected arrestingly in the title of a report published in 1980 on international development issues.⁶ By that time (1980), the implications—political, economic, and legal implications—of the massive gap between the rich countries and the (predominantly new) poor countries were starting to be felt. For example, what does it mean to say (as the UN Charter does) that states enjoy “sovereign equality” in a world that includes a few giant superpowers and many weak microstates or “wannabe” states? At what point does development assistance become paternalism? Can a society possibly be viable as an independent state if its economic stability depends entirely on a handful of commodities that are subject to world prices? In the 1970s and beyond, the GEOs struggled with such questions; and thus far no satisfactory answers have been provided.

The nation-state has been under attack since about the 1970s from another direction as well: the GEOs, along with multinational corporations, have gained in economic power so dramatically that they tend to eclipse many nation-states in influence, shaking the foundations of a system of political organization that has existed on this planet since about the mid-1600s. It is common knowledge by now that about half of the top 100 economies in the world are not those of states but of multinational corporations.⁷ The significance that this development holds for the GEO “story” is that beginning in the 1970s, many of those multinational corporations started what became a tidal wave of foreign direct investment into less developed countries, providing an engine for development that has paralleled (and sometimes challenges) the work and influence of the GEOs. Table 3.1 gives a thumbnail sketch of the growth of foreign direct investment in less developed countries since 1970, comparing it to the record of lending by the IMF and the multilateral development banks into those same countries in that same period.

In short, the second twenty-five years after the GEOs first appeared on the scene—that is, the period from about 1970 to the middle of the 1990s—witnessed dramatic changes in the world economy, reactions by the GEOs to those changes, and a substantial uncertainty also in respect of the

⁶ See *The Report of the Independent Commission on International Development Issues Under the Chairmanship of Willy Brandt*, published as NORTH-SOUTH: A PROGRAM FOR SURVIVAL (1980). For a discussion of the terms “North” and “South”, see *id.* at 31.

⁷ See Elizabeth Debold, *The Business of Saving the World*, available at <http://www.wie.org/j28/business.asp> (last visited July 9, 2007).

Year	FDI volume	FDI % increase Over previous period	LDC financing by IMF & MDBs*
1970	3,853	—	1,036
1975	9,708	152%	3,509
1980	7,698	-21%	7,531
1985	14,214	85%	7,756
1990	35,976	153%	12,609
1995	106,063	195%	17,733
2000	263,655	149%	12,911
2005	360,349	37%	21,839

* Figures are in millions of US dollars at current prices, as of July 10, 2007
Sources: UNCTAD (2007), *Beyond 20/20: World Development Statistics*, available at <http://stats.unctad.org/FDI/TableViewer/tableView.aspx?ReportId=642> (last visited July 9, 2007), and OECD (2007), *International Development Statistics Online*, Development Assistance Committee, available at http://stats.oecd.org/wbos/default.aspx?DatasetCode=REF_TOTALODA (last visited July 9, 2007).

stature of the nation-state. It was against the backdrop of those changes and challenges that the most recent segment of the GEO “story” began.

E. The Contemporary World of the GEOs

Perhaps the most noteworthy theme that warrants our attention regarding the last decade or so, before we turn to a more detailed account of each of the GEOs, relates to the growing public awareness of, and concern over, the GEOs. Whereas the GEOs conducted their operations largely outside public scrutiny or even public interest for the first fifty years after they were created beginning in the 1940s, they now find themselves constantly in the popular consciousness. The past decade in particular has seen the crescendo of criticisms that were summarized above in Chapter Two. November 1999, for example, stands out in the minds of many as an especially important watershed; the “battle in Seattle” involving a crazy quilt of activists protesting the WTO Ministerial meeting being held then in that

city reflected a new level of interest in and concern over the GEOs generally. Why has this crescendo of criticisms developed? I would offer three reasons.

One reason is that the GEOs have been called on to expand their operations—an expansion that began (as noted above) some time ago but has apparently gained enough “critical mass” now to command public attention. Another reason is surely that we are now in the digital-electronic age; information can be exchanged more rapidly, and in greater volume, than ever imagined in earlier ages. Complaints, reactions, disclosures, rumors, questions, and answers all move almost instantaneously; and the expectations that people (especially people under about forty years old) have for immediate answers on demand are very high. Institutions of all types are subjected to challenge; big institutions (such as the GEOs) are subjected to big challenges. A third reason I would give for the growing public awareness of, and concern over, the GEOs is that they provide what appears to be an easy, common, tangible enemy in an age that has found no other easy, common, tangible enemies against whom to direct frustration and fear.

For whatever reasons, then, the GEOs in the past dozen years or so have gained popular prominence and influence, and attracted broad scrutiny, as never before. I hope to develop this theme, along with others I have identified above, as I sketch a series of “nutshell” pictures of the main GEOs.

II. THE IMF IN A NUTSHELL

A. The Grand Design and Its Collapse

1. Establishment of the IMF and the Par Value System

The IMF, formed near the close of World War II along lines proposed by leading US and UK economists and politicians, was originally designed to manage a system of fixed exchange rates. Under that system, currencies of all (or most) countries were to be made freely convertible (that is, tradeable for the currencies of other countries), and the values of the currencies would be unchangeable, except within a narrow range or with prior IMF approval.⁸ This “par value” system of freely convertible, fixed-value cur-

⁸ The rules governing the original system of fixed exchange rates were set forth in the IMF Charter as adopted at the Bretton Woods Conference in 1944. But it is worth noting that that charter has been amended three times. The first amendment, which dates from the late 1960s, introduced the SDR. The SDR is explained in later paragraphs of this chapter. A second amendment to the IMF Charter, much more far reaching than the first, was adopted in the late 1970s and entered into force in 1978. The third and most recent amendment to the charter, which took effect in 1992, added a new sanction

rencies was favored by the countries that formed and joined the IMF because predictability in the convertibility and value of currencies would help foster trade, which itself was seen as a means of improving the international economy and, ultimately, of contributing toward peaceful relations. The fixed-value system of currency exchange rates was particularly attractive compared with the circumstances of the inter-war period (discussed earlier in this chapter), in which countries competitively manipulated the values of their currencies in an effort to gain short-term trade advantages.

In order to make this “par value” system work, the IMF Charter authorized the IMF to make short-term loans available to member countries having temporary balance-of-payments difficulties—see Box 3.4—as could occur when a bad crop year reduced a country’s export revenues. The IMF used this authority when necessary, and the USA borrowed from the IMF for that reason as recently as the late 1970s.

2. *Collapse of the Par Value System and a Redirected IMF*

The par value system of fixed exchange rates broke down in the early 1970s when the US government announced that it would no longer abide by some of its IMF Charter obligations on currency convertibility. The IMF’s members radically amended the IMF Charter accordingly,⁹ and the IMF’s operations were correspondingly reduced. However, when the 1982 debt crisis broke out—upon the announcements by Mexico and Brazil that they would no longer be able to service their debt obligations—the IMF took a lead role that has set the stage for its operations ever since. Now its credit operations (some of which are not technically loans but coincident unilateral undertakings) focus mostly on member countries with persistent balance-of-payments problems and occasionally on responding to crises that threaten the international monetary system as a whole. The Asian

that could be imposed on a member country for failing to pay its arrears to the IMF. A proposed fourth amendment, under which a special one-time allocation of SDRs would take place, has not yet become effective. All references hereinafter to the IMF Charter reflect the text as it stands following the third amendment, unless otherwise specified. The par value system of fixed exchange rates, however, applied only until the 1970s. The second amendment to the IMF Charter eliminated all provisions relating to that system.

⁹ Perhaps the most important change appeared in Article IV of the IMF Charter. In its original formulation, Article IV provided for the establishment of a par value (expressed in terms of gold or US dollars) for each member country’s currency and prohibited a country from changing or departing from such par value by more than 1 percent (in most cases) without IMF approval. After the amendments of the late 1970s, Article IV permitted each member country to establish exchange arrangements of its choice and merely required a member country to notify the IMF of its decision in that regard.

Box 3.4: A Glimpse at National Balance of Payments

A country's balance of payments may be seen (in simplified terms) as having two main components:

1. its *current account*, which consists mainly of
 - a. the country's trade balance (that is, net exports [exports minus imports] of goods and services) and
 - b. the country's income from abroad (such as payments made to the residents of that country in the way of interest and dividends on investments those residents have overseas) and
 - c. the country's net unilateral transfers from abroad (such as foreign aid, grants, etc.); and
2. its *capital account*, which consists of the net change in foreign ownership of domestic assets (that is, the increase in foreign ownership of domestic assets minus the increase of domestic ownership of foreign assets).

All these factors, when measured for a specific year, constitute a country's balance of payments for that year. A country has balance-of-payment *difficulties* if it persistently has a large current account deficit.

financial crisis of the late 1990s is an example of the latter; the IMF lent unprecedented amounts of money to Thailand, Indonesia, and Korea to stop that crisis from spreading further in Asia and elsewhere.

B. IMF Financing and Resources

1. IMF Financing Facilities

The IMF has several different mechanisms or facilities by which it provides financing to its member countries. The most common type is a stand-by arrangement (first used in 1952), under which the IMF assures a member country that it can draw up to a specified amount of money, usually over twelve to eighteen months, to deal with a short-term balance of payments problem. Closely related to the stand-by arrangement is funding through the EFF (dating from 1974), which allows a member country to draw up to a specified amount over a longer term—usually three or four years—to help it tackle structural economic problems that are causing weaknesses in its balance of payments.¹⁰

¹⁰ It is perhaps worth pointing out that IMF financing under a stand-by arrangement or under an EFF arrangement does not, technically and legally speaking, take the form of a loan. Instead, it consists of exchanges of currencies according to a pair of legally

A third source of IMF financing is the PRGF, which gives low-interest financing to help the poorest member countries facing protracted balance of payments problems. This facility,¹¹ created in 1999, replaced the earlier ESAF created in 1987, and, like that earlier facility, is financed with resources raised through past sales of IMF-owned gold and with loans and grants provided to the IMF for this purpose, mainly by wealthy countries.

It bears emphasizing that this form of financing—from the PRGF—is substantially different from the IMF’s financing through stand-by arrangements or EFF arrangements. The terms are much more favorable to the borrowers, with longer maturities (repayment periods) and lower interest charges: instead of paying charges based on market interest rates, countries borrowing under the PRGF pay only one half of 1 percent per year. These are called “soft” loans, as distinct from the “hard” loans the IMF makes under its other facilities.

A fourth source of IMF financing is the Supplemental Reserve Facility (created in 1997), which provides additional short-term financing to a member country experiencing exceptional balance-of-payments difficulty because of a sudden and disruptive loss of market confidence reflected in capital outflows—as was the case in the Asian financial crisis of the late 1990s.

A fifth source of IMF financing was created in 1999 but expired in 2003 (without ever being used, in fact). Called the Contingent Credit Line (CCL), it provided a means by which the IMF could provide a precautionary line of defense enabling a member country that is pursuing strong economic policies to obtain financing on a short-term basis when faced by a sudden and disruptive loss of market confidence because of contagion from difficulties in other countries. Although the CCL has expired, recent proposals have coalesced around a new instrument that would broadly share the objectives of the CCL.

The IMF also has some other less-used financing mechanisms. A snapshot of all the principal types of IMF financing, and the key terms that apply to each, appears in Box 3.5.

free-standing unilateral commitments—one by the IMF and one by the country. If, for example, the IMF approves a stand-by arrangement for Bangladesh, that country is authorized, subject to certain conditions, to purchase from the IMF a specified amount of hard currency using Bangladesh’s own currency. Bangladesh is then required to reverse the transaction not later than a specified date by repurchasing its own currency with hard currency.

¹¹ Several categories of funds administered by the IMF are called “facilities”. The reason for this terminology is not important enough to warrant exploring here.

Box 3.5: How the IMF Lends: Details of Financial Facilities

(Excerpted from the IMF publication "IMF in Focus", dated September 2006.)

- Stand-By Arrangement and Extended Fund Facility
 - **Stand-By Arrangement** (1952). Addresses balance of payments difficulties that are short term; the arrangement is typically 12–18 months with a legal maximum of 3 years.
Access limits: Annual, 100 percent of quota; cumulative, 300 percent of quota for all use of IMF resources in the General Resources Account.
Maturities (expected repayment) / (obligatory repayment): 2¹/₄–4 years / 3¹/₄–5 years.
Charges: market-based, with surcharges for higher amounts.
Phasing: quarterly disbursements, contingent on observance of performance criteria and other conditions.
 - **Extended Fund Facility** (1974). Provides longer-term assistance in support of structural reforms that address longer-term balance of payments difficulties.
Access limits: same as for Stand-By Arrangement.
Maturities: 4¹/₂–7 years / (or up to 10 years).
Charges: market-based, with surcharges for higher amounts.
Phasing: quarterly or semiannual disbursements contingent on observance of performance criteria and other conditions.
- Special loans
 - **Supplemental Reserve Facility** (1997). Provides short-term assistance to members with balance of payments difficulties related to a sudden and disruptive loss of market confidence. Available only as a supplement to a regular arrangement.
Access limits: None.
Maturities: 2–2¹/₂ years / (or up to 3 years).
Charges: market-based, with surcharges for higher amounts.
Phasing: facility available for one year; front-loaded access with two or more disbursements.
 - **Compensatory Financing Facility** (1963). Covers (i) a shortfall in a member's export earnings and services receipts or (ii) a temporary excess in cereal import costs.
Access limits: 45 percent of quota for each element, combined limit of 55 percent.
Maturities: 2¹/₄–4 years / (or up to 5 years).
Charges: market-based, not subject to surcharges.
Phasing: typically disbursed over a minimum to six months

- **Emergency Assistance . . . available for—**

natural disasters (1962). Provides quick, medium-term assistance to members with balance of payments difficulties related to natural disasters.

postconflict (1995). Provides quick, medium-term assistance for balance of payments difficulties related to the aftermath of civil unrest or cross-border armed conflict.

Access limits: 25 percent of quota, subject to exceptions.

Maturities: 3¹/₄–5 years.

Charges: market-based, not subject to surcharges; interest subsidy sometimes available.

Phasing: typically none.

- *Loans for low-income members*

- **Poverty Reduction and Growth Facility (1999).** Provides longer-term assistance for deep-seated, structural balance of payments difficulties; aims at sustained, poverty-reducing growth.

Access limits: 140 percent of quota, with exceptional maximum of 185 percent.

Maturities: 5¹/₂–10 years.

Charges: concessional interest rate—¹/₂ of 1 percent a year, not subject to surcharges.

Phasing: semiannual (sometimes quarterly) disbursements contingent on observance of performance criteria and completion of review.

- **Exogenous Shocks Facility (2005).** Approved, not yet fully funded—to provide policy support and finance assistance to low-income countries facing exogenous shocks (commodity price changes, trade disruptions from neighboring country, etc.); available to countries eligible for the PRGF but without a PRGF-supported program in place.

Access limits: 25 percent of quota; cumulative access limit of 50 percent.

Maturities: 5¹/₂–10 years.

Charges: concessional interest rate—¹/₂ of 1 percent a year, not subject to surcharges.

Phasing: semiannual or quarterly disbursements contingent on observance of performance criteria and, in most cases, completion of a review. ESF program would be 1 to 2 years in length.

2. IMF Conditionality

In providing financing to its members under the various mechanisms and facilities enumerated above, the IMF almost always engages in “conditionality”. Under conditionality, the IMF disburses money to a borrowing country only on a piecemeal basis (rather than in a single lump sum) and only if the country can demonstrate that certain economic and financial

policies that the borrowing country's government committed to in advance with the IMF are in fact being implemented and having the desired results. The types of policies that IMF conditionality often focuses on include such rather obvious things as (1) a reduction in government spending and foreign borrowing, (2) regulation of the money supply to stop or forestall inflation, and (3) steps to strengthen banking supervision in order to protect depositors from being bilked out of their savings by dishonest or incompetent bank managers.

Conditionality also can, depending on the circumstances, reflect policies for liberalizing a country's trade and investment laws, encouraging privatization of government-owned entities or operations, and strengthening tax laws and collection—all with an eye to improving a country's overall economic stability and performance. Since the late 1990s, "in growing recognition of the adverse impact of poor governance (and the resulting corruption) on economic efficiency and growth, the IMF has turned its attention to a broader range of institutional reforms and governance issues in the reform programs it supports",¹² and therefore in its use of conditionality. Measures to improve governance include strengthening legal frameworks and applying international standards of accounting and auditing.

3. *IMF Resources for Lending*

Where does the IMF get the money to make its loans? Mainly from a pool of resources formed by its members' subscriptions to the IMF's capital. The level of each member's subscription is equal to its "quota" in the IMF, and a member's quota—denominated in SDRs created by the IMF following the first amendment to the IMF Charter (see Box 3.6)—is largely determined by its economic and financial position relative to the other members. The USA, by virtue of its historically dominant economic strength in the world, has the largest quota, so its subscription to the IMF's capital is the largest. In addition to this source of capital, the IMF also maintains two standing borrowing arrangements with official lenders; but the IMF has not had to draw upon either of these arrangements for several years. Furthermore, the IMF is empowered to borrow from private markets but has not done so.

For administrative expenses, the IMF has traditionally relied largely on income from its lending operations. This is described below in subsection D3.

¹² Thomas Wolf & Emine Gürgen, IMPROVING GOVERNANCE AND FIGHTING CORRUPTION IN THE BALTIC AND CIS COUNTRIES 8–9 (Int'l Monetary Fund, Economic Issues No. 21, 2000), available at <http://www.imf.org/external/pubs/ft/issues/issues21/index.htm> (last visited Apr. 9, 2007).

Box 3.6: A Glimpse at SDRs

The SDR is an international reserve asset created in 1970 by the IMF following the first amendment to the IMF Charter, referred to above. The SDR is valued on the basis of a basket of key international currencies—currently the Euro (34 percent), the Japanese yen (11 percent), the pound sterling (11 percent), and the US dollar (44 percent)—and serves as the unit of account of the IMF and a number of other international organizations. The SDR’s value as a reserve asset derives from the commitments of member countries to hold and accept SDRs and to honor various obligations connected with the operations of the SDR system. The IMF allocates SDRs to its members in proportion to their IMF quotas.

C. Other IMF Operations

The IMF does more than just make loans. Three other activities in particular warrant mention: surveillance, technical assistance, and special policy endorsement.

1. Surveillance

Although surveillance can take several forms, the most important form is that of country surveillance. The IMF conducts regular consultations, normally once a year, with each member country (rich or poor, big or small) about its economic and financial policies. These consultations—referred to as “Article IV consultations” because they are required under Article IV of the IMF Charter¹³—typically culminate in the issuance of observations and recommendations by the IMF of each member country’s economic and financial policy performance. In addition, of course, the IMF undertakes frequent monitoring of economic and financial factors in those countries that have borrowed funds from the IMF.

2. Technical Assistance

Technical assistance is another key feature of IMF operations that attracts little attention from the public at large. Representing about a quarter of the IMF’s total administrative budget, IMF technical assistance helps member countries design and implement financial policies, draft and review legislation, and build institutional capacity. In a recent representa-

¹³ This provision requires that the IMF “adopt specific principles for the guidance of all members with respect to [exchange rate] policies” and that “[t]hese principles shall respect the domestic social and political policies of members, and in applying these principles the Fund shall pay due regard to the circumstances of members”.

tive year, the IMF provided over 350 person-years of such technical assistance. In fiscal year 2006, the IMF Institute—by which the IMF provides formal training courses—joined with other IMF departments to deliver 143 courses for almost 4,600 participating officials, mainly at regional training facilities that the IMF operates.

3. Special Policy Endorsement

The IMF regularly examines and advises on its member countries' economic and financial policies, but in 2005 it introduced a new kind of instrument—Policy Support Instruments—designed for low-income countries that do not currently need or want IMF financing but do wish to have IMF endorsement of their economic and financial policies, and to provide advice and monitoring in connection with those policies. If a country agrees with the IMF on such a Policy Support Instrument, that will serve as a signal to donor countries, MDBs, and the markets that that country's policies have been discussed with the IMF; this can, in turn, help a country boost its international reputation for financial prudence.

D. Governance and Other Institutional Matters

1. IMF Structure and the Weighted Voting System

Understanding the structure of the IMF—that is, its system of internal governance, membership, capitalization, voting rights, and so forth—is essential to understanding and evaluating some of the key criticisms leveled against it. Overall authority over the IMF's activities is vested in a Board of Governors, which is composed of ministers of finance or heads of central banks from each of the IMF's member countries, of which there were 185 as of mid-2007. The Governors gather officially as a body only once a year, as the day-to-day work of the IMF is conducted by a staff and Managing Director acting under the supervision of the Executive Board. Under some changes initiated in late 1999 that will, according to the IMF's former General Counsel, give "greater direct involvement of governments in the policy-making process" in the IMF, a group of twenty-four Governors—the International Monetary and Financial Committee—gathers twice a year to provide policy oversight to the Executive Board. That Executive Board, based at the IMF's headquarters in Washington, DC, consists of twenty-four Executive Directors appointed or elected by the IMF's member countries. The Executive Board meets about three times a week in formal session. At present, five Executive Directors are appointed by the members with the largest IMF quotas—the USA, Japan, Germany, France, and the United Kingdom—and each of the other nineteen Executive Directors is elected by one country or a group of countries. The Executive Board rarely makes its decisions on the basis of formal voting, relying instead on the formation of consensus among its members.

When formal voting is conducted, however, it reflects a “weighted voting” system that places most of the voting power in a handful of countries. A member country has, according to Article XII of the IMF Charter, “two hundred fifty votes plus one additional vote for each part of its quota equivalent to one hundred thousand special drawing rights”. Under this formula, the five countries mentioned in the previous paragraph control just under 40 percent of the total voting power in the IMF.¹⁴ If the other two countries in the Group of Seven (G-7)¹⁵ are included in the calculation, the aggregate voting power is nearly 45 percent of the total.¹⁶ Although the basic rule set forth in Article XII of the IMF Charter is that all decisions are made by a majority of the votes cast, special majorities are required for particular decisions, including the reimposition of fixed exchange rates (85 percent) and the amendment of the charter (also 85 percent), including, of course, the charter provisions establishing the weighted voting system itself.

2. *Membership; Obligations; Privileges and Immunities*

The IMF has 185 member countries. This is nearly all the countries in the world. Before the end of the Cold War, of course, the story was different. Although the USSR had participated in the Bretton Woods conference, it did not become an IMF member in the 1940s. Only in the late 1980s, when the Soviet leader Mikhail Gorbachev was pressing for economic and political change in that country, did the Soviet Union come close to IMF membership, in the form of a proposed “associate membership” status. Once the USSR collapsed, the various former Soviet republics became IMF members one by one. The most recent of the former Soviet republics to gain IMF membership was Tajikistan, in 1993.

In becoming an IMF member, a country undertakes certain obligations regarding economic and financial policies, including especially its management of a national currency. These obligations, commonly referred to as the “code of good conduct”, are laid out mainly in Articles IV and VIII of the IMF Charter. They include a general duty to collaborate with the

¹⁴ For a listing of the voting power for each member of the Executive Board as of July 2007, see Table B in the Appendix to this chapter. As indicated there, the percentages of overall voting power for those Executive Directors representing the USA, Japan, Germany, France, and the United Kingdom are 16.79 percent, 6.02 percent, 5.88 percent, 4.86 percent, and 4.86 percent, respectively. For a listing of the voting power for each IMF member country as of July 2007, see Table B in the Appendix to this chapter.

¹⁵ The Group of Seven, or G-7, consists of the USA, Japan, Germany, the United Kingdom, France, Italy, and Canada. In recent years, the Russian Federation has been invited to G-7 meetings, and the group is now often referred to as the G-8, as reflected on its Web site, <http://www.g8.fr>.

¹⁶ Canada’s voting power in the IMF is 2.89% of the total, and Italy’s is 3.20 percent.

IMF and other members in order “to assure orderly exchange arrangements and to promote a stable system of exchange rates”, and more specific duties on that country to (1) pursue policies that foster “orderly economic growth with reasonable price stability”, (2) pursue policies that foster “orderly underlying economic and financial conditions and a monetary system that does not tend to produce erratic disruptions”, and (3) “avoid manipulating exchange rates” in order to gain an unfair competitive advantage over other members. In addition, an IMF member is obligated to cooperate with the IMF in the so-called “Article IV consultations”, referred to above, which the IMF is empowered to carry out with members (usually annually) and to provide information requested by the IMF regarding foreign exchange holdings, exports and imports, national income, exchange controls, and the like.

Moreover, an IMF member is required, unless it has taken advantage of certain “grandfathering” provisions, to avoid imposing restrictions on the making of payments or transfers in respect of current international transactions—these include, most importantly, transactions involved in paying for importation of goods—and to refrain from engaging in “discriminatory currency arrangements or multiple currency practices”. While the content of these and other obligations of membership might seem rather narrow and technical, the monitoring of such matters constitutes a major area of IMF activity—eclipsed in the public eye by the IMF’s credit operations but central to the IMF’s original purpose of facilitating a stable international monetary system.

Two other obligations of membership—unrelated to exchange rates and monetary policy—warrant brief mention. First, perhaps obviously, an IMF member is obligated to repay the amounts it borrows from the IMF and to pay interest and other charges where applicable. Failure to honor this obligation can (under Article XXVI of the IMF Charter) make a country ineligible to borrow further from the IMF and, if the failure persists, can lead to a suspension of the member’s voting rights or even to the member’s expulsion from the IMF. Second, a member’s obligations under the IMF Charter include a duty to grant certain privileges and immunities to the IMF itself—for example, exemption from national or local taxes, immunity from judicial process, and inviolability of archives—as well as certain privileges and immunities to IMF staff members. In general, such privileges and immunities are intended to underscore the IMF’s stature as an independent legal entity with some of the same attributes as states.

3. Funding the IMF’s Operational Expenses

The IMF’s current income framework relies heavily on income from its lending operations. That is, the IMF earns some income from the interest charges and fees levied on its loans (mainly the “hard” loans, of course, as

in the form of stand-by arrangements), and from that income the institution pays its two main expenses—(1) interest that the IMF itself pays to those countries (such as the USA) whose currencies are used heavily in the IMF's lending operations and (2) administrative expenses, including staff salaries, pensions, travel costs, etc. Recently the amount of lending made by the IMF has dropped substantially, in large part because of the increased availability of funding from other (mainly private-sector) sources, including the issuance of bonds by governments whose economic circumstances have improved in recent years. As a result, the IMF is scrambling to find other means of generating income. Recent proposals were unveiled by a "Committee of Eminent Persons" for meeting this change in circumstances. Under the proposal, the IMF would (1) expand its investment operations to generate further income for the institution, (2) sell some of the IMF's gold holdings to create an endowment, from which a return could be used to cover expenses, and (3) charge fees for certain services to member countries who could afford such fees.¹⁷

4. *Debt Relief*

In the past decade the IMF has paid increasingly close attention to addressing the huge levels of debt that some of its member countries carry. The Highly Indebted Poor Countries (HIPC) Initiative, introduced in 1996 and enhanced in 1999, provides a vehicle whereby creditors of those countries provide debt relief, in a coordinated manner, with a view to restoring debt sustainability.

More surprisingly, in early 2006, the IMF reversed its decades-old policy of not entertaining any proposals for rescheduling of its own credit to members; under the Multilateral Debt Relief Initiative (MDRI), the IMF—together with the IDA (the World Bank's soft-lending agency) and the African Development Fund (associated with the AfDB)—started canceling 100 percent of the debt claims those institutions held on certain countries, in order to help them advance toward the so-called "Millennium Development Goals" that were agreed to (under UN auspices) by the heads of most countries in the world in September 2000. Eligibility requirements for such debt cancellation are demanding, but so far numerous countries in Africa, and some elsewhere, have qualified. (As of August 2006, the IMF had canceled the debts owed to it by nineteen poor countries.) Problems can arise, of course, when the circumstances of a country cry out for debt

¹⁷ For details on the proposals, and for information about prior sales of IMF gold holdings, see *Experts Call for New Ways to Fund IMF*, 36 IMF SURVEY 35 (Feb. 12, 2007). The proposal to sell some IMF gold holdings would require an 85 percent favorable vote by the membership. On that point, and for some other queries regarding the long-term financial viability of the IMF, see *Funding the Fund*, ECONOMIST, Feb. 3, 2007, at 75.

relief, but the performance of the country's government falls short of the requirements that have been set—and that other governments have worked hard to meet. A recent example of this arose in the case of Liberia, whose new president, a former World Bank economist and Africa's first elected female head of state, pressed IMF (and World Bank) officials to write off the US\$1.2 billion that the country owes to those institutions.¹⁸

III. THE WORLD BANK AND THE REGIONAL MDBS IN A NUTSHELL

Having worked through a synopsis of the IMF in the preceding section, we shall find it easier in this section to get a “nutshell” view of the MDBs, for two reasons. First, the MDBs—and particularly the two entities that comprise the World Bank—share many structural features with the IMF. Second, the MDBs are intrinsically less complicated than the IMF both in their operations and in their sources of funding. Having said that, I would hasten to add that some key features of the MDBs apparently remain misunderstood by many people. Hence the need for a brief introduction here that builds on the historical sketch I offered in section I of this chapter.

Although they differ in important ways, it is appropriate for present purposes to offer a unified picture of the six MDBs. Recall that the MDBs are (as shown above in Box 3.1):

- the IBRD, chartered at the Bretton Woods conference in 1944,¹⁹
- the IDA, chartered in 1960 (the IBRD and the IDA together are called the World Bank),
- the IADB,²⁰ chartered in the late 1950s,
- the AfDB,²¹ chartered in the early 1960s,

¹⁸ For details, see Krishna Guha and Dino Mahtani, *Pressure Increases to Write Off Liberia's \$1.2bn Debt*, FINANCIAL TIMES, Feb. 13, 2007, at 6.

¹⁹ Like the IMF Charter, the IBRD Charter has been amended since its approval at the Bretton Woods conference, although only once (in 1965).

²⁰ The IADB, like the IBRD and the IDA and all the other MDBs, is governed by a charter that takes the form of a treaty. The IADB's membership comprises forty-six countries, including twenty-six Latin American and Caribbean countries, the USA, and eighteen nonregional countries. The IADB is headquartered in Washington, DC.

²¹ The AfDB's membership comprises fifty-three countries in Africa and twenty-four non-African countries. The AfDB provides loans on non-concessional terms. However, a companion institution, the African Development Fund, established in 1973, provides loans on concessional terms to low-income member countries in the region. The AfDB, having been headquartered in Abidjan for many years, recently shifted its headquarters to Tunis.

- the AsDB,²² chartered in the mid-1960s, and
- the EBRD,²³ chartered in 1990.

These institutions can be considered in aggregate because they all share the same fundamental precepts and structures that are most important for evaluating the criticisms currently leveled against them. Most importantly, all of these institutions have economic development as their motivating aim—an aim to which they commit and disburse, in aggregate, about US\$35 billion every year. Hence I offer in the following paragraphs a brief description intended to apply to all the MDBs.

A. MDB Lending Operations

1. *Project Financing*

The bread-and-butter work for the MDBs has traditionally been to provide financial intermediation²⁴ for specific development projects, usually for constructing some form of infrastructure or productive operation within a “project area” in the borrower’s country. The MDBs provide loans (and some grants) to finance projects to build roads, irrigation systems, rural health clinics, wastewater treatment systems, port facilities, power plants, schools, transmission lines, fertilizer plants, pipelines, and other physical structures, and to provide for such intangible outputs as agricultural credit, teacher training, farmers’ workshops, and various other forms of institutional strengthening. The loans that MDBs provide for such projects are typically made on a reimbursement basis, so that funds are transferred from the lending MDB to the borrower only against expenditures as they are actually incurred by the borrower or implementing agency, rather than as balance-of-payments loans of the type provided by the IMF.

Selection and design of a specific development project to be financed by an MDB typically occurs through a collaborative process that involves several parties and several phases. Government officials, MDB staff members, and (increasingly in recent years) local residents of the “project area”, as well as other groups with a particular stake in the outcome of the project, will influence the planning and preparation for the project. Once designed, the proposed project is scrutinized closely by a team of MDB staff

²² The AsDB is headquartered in Manila. It has sixty-seven members—forty-eight in the region and nineteen non-regional members.

²³ The EBRD is headquartered in London. It has sixty-three members.

²⁴ “Financial intermediation” simply means serving as an intermediary, like any commercial bank does, between (1) persons who have money available for use in investment and (2) persons who want loans.

members and outside experts engaged to appraise the financial viability, economic benefit, environmental considerations, social aspects, and other features and expected effects of the project. If the project passes muster in this appraisal phase, approval will be sought from the MDB's management and governing organ for actual financing of the project (via a loan made by the MDB in hard currency) and for entering into legal agreements with the borrower (typically a national government agency) and other entities involved in implementation of the project. Once these steps have been taken, proceeds of the approved loan will be available for use (usually on a reimbursement basis, as mentioned above) in building the facilities or carrying out the activities involved in the project. This project implementation stage often takes several years, during which loan disbursements are made, progress reports are issued and discussed by government and MDB officials, modifications in the project are agreed on as necessary, and ultimately the project is completed, and the loan is closed.

MDBs offer several variants of such project loans, referred to as sector loans or development finance institution (DFI) loans, but the end result is generally the same: a specific package of change is carried out—facilities are built, training is undertaken, equipment is installed, etc.—for the purpose of improving the economic circumstances of the borrowing country's people.

2. Policy-Based Lending

As a departure from the project-lending model of financing, most or all of the MDBs also engage to some degree in “policy-based” lending. In these cases, funds are provided by the MDBs to borrowing countries to support (and in return for) the adoption by those countries' governments of certain economic and financial policies favored by the MDBs. For example, the guidelines on such policy-based lending as carried out by the AsDB require that the lending will be based on a “broad-based sector reform and development plan that will enhance sector efficiency and performance, comprising in particular policy changes and institutional development”.²⁵ Consistent with these guidelines, the AsDB has made policy-based loans for numerous purposes—for example, financial sector reform in several of its member countries.

²⁵ This language is drawn from the AsDB's Operations Manual, available on the AsDB Web site, <http://www.adb.org>. “Program lending” is the term used in the AsDB to refer to policy-based lending.

3. *Lending Terms*

The loans made by the MDBs, whether they take the form of project lending or policy-based lending, are subject to terms that require the payment of interest and the repayment of the principal. In recent years, the MDBs have offered increasingly complicated and sophisticated packages of terms, but it is not too much of a simplification to say that the terms typically involve (1) market-based interest rates and relatively short maturities (on the order of eight to twelve years) for the loans made to those countries that are fairly well-off economically and (2) “concessional” terms—that is, interest-free or nearly so with long maturities (often thirty-two or forty or even fifty years)—for the loans made to the poorest countries.²⁶ These are referred to as “hard” loans and “soft” loans, respectively. (A similar distinction between “hard” loans and “soft” loans appears in the IMF’s operations, as described earlier in this chapter.) The funds used by the MDBs for making such loans come from different sources, as described more fully a few paragraphs below.

In their lending operations, as in the IMF’s credit operations, the MDBs follow a practice of conditionality—that is, making their loans conditional upon certain commitments being made or action being taken by the borrowers. In the smaller of the two categories of lending mechanisms described above, policy-based lending, the conditions operate and sometimes even look like conditions in IMF financing arrangements: they call on a borrowing member country to implement specified economic or financial policies favored by the MDB in order for the disbursement of loan proceeds to continue. In the larger category, project lending, the MDBs typically impose numerous conditions relating to the government’s commitment of budgetary resources to support the project being financed, the need for environmental protection measures in project implementation, various reporting requirements, and so forth.

4. *Procurement*

Numerous other aspects of MDB lending operations could be included in this “nutshell” account, but I shall limit myself to one more: procurement of goods and services for use in MDB-financed projects. I referred above to the many types of projects that the MDBs finance, including the

²⁶ Typical terms on an IDA loan include a maturity of 40 years and a service charge of 0.75 percent. Typical terms on a soft loan from the AsDB (through the Asian Development Fund) include a maturity of thirty-two years (if the loan applies to a project, rather than a quick-disbursing program loan) with an interest charge of 1 percent for the first few years and 1.5 percent thereafter. All of the MDBs except the EBRD provide both “hard” and “soft” loans; the EBRD does not provide “soft” loans.

building of roads, irrigation systems, rural health clinics, wastewater treatment systems, port facilities, power plants, schools, transmission lines, fertilizer plants, pipelines, and other physical structures, and the provision of such intangible outputs as agricultural credit, teacher training, farmers' workshops, and various other forms of institutional strengthening. Such projects require enormous quantities of equipment, supplies, and expertise—valued at nearly US\$5 billion in a recent year in just one of the regional MDBs. As a general rule, the MDBs insist that the procurement (that is, the purchasing) of these goods and services conform to three basic criteria: (1) that they be supplied from eligible member countries (although the EBRD does not have such requirements); (2) that such procurement be carried out with due regard to the economic and efficient use of the proceeds of the MDB loans paying for them; and (3) that there be adequate, fair, and equal opportunity for member countries to participate in the supply of such goods and services.

The first of these three criteria is especially noteworthy, because it helps explain why economically developed countries join the MDBs. Those countries typically win a very large share of the contracts to supply goods and services for use in MDB-financed projects. Without MDB membership, those developed countries would be ineligible to bid on most such projects.²⁷

B. Technical Assistance and Other Operations

In addition to making loans to its member countries, the MDBs also offer another crucial form of development assistance financing—grant financing for technical assistance. Although some technical assistance is provided by the MDBs as loans, most such assistance comes in the form of grants. And the overall number of such grants (the amounts of which are individually relatively small) results in a very substantial transfer of resources from the richer countries to the poorer countries, inasmuch as the resources relied on for such technical assistance grants come by and large from contributions made by the richer countries.

²⁷ This eligibility requirement, imposed by most of the MDBs, represents a modest form of “tied aid”, in which procurement contracts can be awarded only to certain countries providing the financing. Of course, the most substantial form of “tied aid” comes in the context of bilateral development financing operations as conducted by individual countries, such as the USA via the US Agency for International Development (USAID). This issue takes on special importance recently in the context of the PRC’s increasing involvement in bilateral development financing, a matter that will be discussed in Chapter Six.

A general idea of the categories of technical assistance provided by the MDBs can be gained by examining the four types of technical assistance provided by the AsDB:

- PPTA (project preparatory technical assistance), used to assist in the preparation of one or more projects that will likely be funded later by a loan from the MDB. PPTA often involves a feasibility study or detailed engineering for a project, and the provision of PPTA funding helps to keep the “pipeline” of an MDBs project financing well stocked.
- PITA (project implementation technical assistance), used not to help design projects, but rather to help implement them, as by training local personnel who will be working in facilities built under the project.
- ADTA (advisory technical assistance), used for institutional building. ADTA may be provided either on a stand-alone basis or in connection with a specific project, and it usually focuses on establishing or strengthening institutions, preparing national development plans, and carrying out issues-oriented studies.
- RETA (regional technical assistance), which involves activities covering more than one member country. RETA provides financing for such things as training, conferences, research, etc.

In addition to project and policy-based lending, discussed in the previous subsection, and technical assistance financing, discussed briefly above, the MDBs also engage in a limited range of other financial operations. One of these is the provision of guarantees. These take several forms, but in general they involve a guarantee issued by the MDB that a member country will repay to another lender a financial obligation made to it by that member country. Despite early expectations that guarantee operations would figure importantly in MDB operations, the volume of such operations has remained very modest.

Another operation carried out by most of the regional MDBs is the provision of financial assistance to private sector enterprises (that is, companies that do not have government ownership or control)—as distinct from the financing discussed above to benefit the public sector.²⁸ For instance, the AsDB relies on Articles 2(i), 11(iii), 14, and 15(2) of its charter to make loans to, and equity investments in, various types of private sector enterprises. The provision of such financial assistance is predicated, of

²⁸ The World Bank—that is, the combination of the IBRD and the IDA—does not provide financing to private sector enterprises because that task is carried out by the affiliate of the IBRD and the IDA, the International Finance Corporation. See *supra* note 3.

course, on an MDB's overall objective to improve economic development, and this distinguishes MDB private-sector financing from the financing provided by private financial institutions, whose central aim is profit making. Because of the development aim that their charters call on the MDBs to serve, private-sector financing often (but not always) involves government guarantees by the affected member countries. Like guarantee operations, most MDB private sector operations have remained modest in scope.

One further aspect of MDB financing operations warrants a brief mention. Increasingly over time, the MDBs have engaged in what is termed "co-financing". This term refers to a financing arrangement under which funds from other sources outside a borrowing country are provided, in addition to an MDB loan. Co-financing typically takes one of two forms: (1) commercial co-financing, in which the additional funding comes from private sources such as commercial banks or export credit agencies—for example, the US Export-Import Bank (EXIMBANK)—and (2) official co-financing, in which the additional funding comes from governments, government agencies (such as the USAID) or other multilateral institutions, including, of course, other MDBs. By helping a country arrange for such co-financing of a project, an MDB can leverage the impact of its own involvement in that project.

C. Resources and Other Financial Matters

1. More on the Distinction Between Hard Loans and Soft Loans

Where do MDBs obtain the resources they need to engage in the various financial operations described in the preceding paragraphs? Despite public impressions to the contrary, roughly two-thirds of the necessary resources come *not* from public coffers, or ultimately from tax revenues of the rich countries, but rather from private sector-investors. I shall repeat that for emphasis: most of the resources that MDBs use in their lending operations come *not* from rich country tax revenues, but rather from private-sector investors.

In order to understand the sources of funds on which MDBs rely, it is important to appreciate the distinction made earlier between "hard" loans and "soft" loans. As described above, hard loans are made by the MDBs at market-based interest rates and shorter maturities than soft loans, which carry highly concessional interest rates (often around 0 or 1 percent). In some of the MDBs, most notably the two component entities of the World Bank (i.e., the IBRD and the IDA), hard loans are, as a technical and legal matter, made by one institution, and soft loans are made by another. In other MDBs, such as the AsDB, a single institution makes both types of loans.

In all events, however, the resources used for soft loans are kept separate from those used for hard loans—not only because those resources

have different uses but also because they have different sources. The AsDB, for example, carefully separates its Ordinary Capital Resources (OCR) from its “Special Funds” resources. The institution uses its OCR to conduct what its charter refers to as “ordinary operations”—hard loans—and its Special Funds resources to conduct what its charter refers to as “special operations”—soft loans.

In general, the MDBs make hard loans from OCR and soft loans from Special Funds resources. Importantly, OCR consists largely of funds that the MDBs borrow on international capital markets. Expressed differently, hard loans are made overwhelmingly from funds that come from investors, not from government tax revenues. Soft loans, by contrast, do come ultimately from tax revenues, in the form of contributions made by the economically developed member countries of the MDBs. (As noted above, the EBRD does not make “soft” loans.) For a schematic representation of the difference between the sources of funds for “hard” loans versus “soft” loans, compare Box 3.7 with Box 3.8.

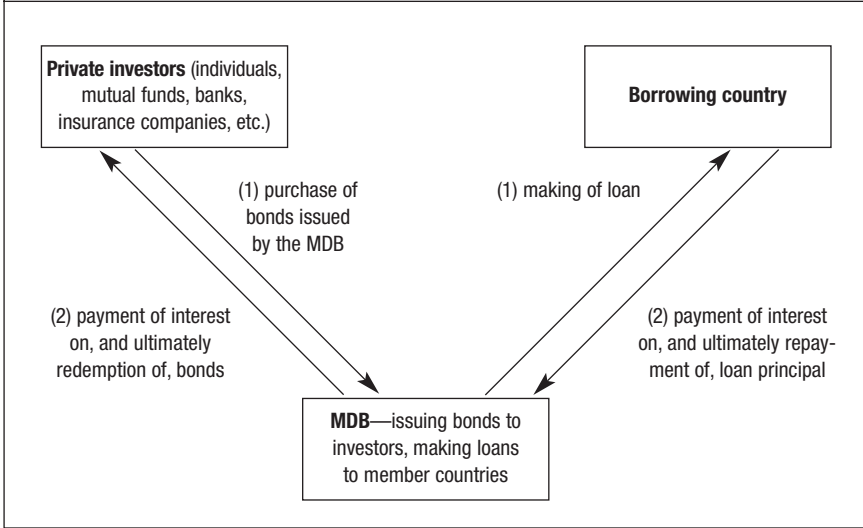
2. *MDB Capitalization, Borrowings, and Replenishments*

To explore these matters more fully, I offer in the following three paragraphs a synopsis of the capitalization of the MDBs, their borrowing powers and programs, and the processes by which they attract contributions for their soft-lending operations.

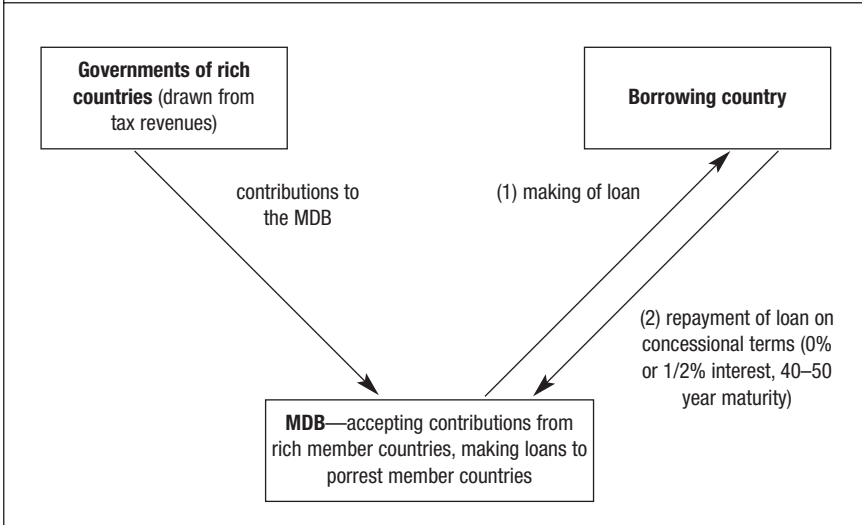
Typically an MDB’s capital, like that of companies under many legal systems, is categorized as authorized capital, subscribed capital, paid-in capital, and callable capital. The authorized capital stock is the amount that the MDB’s governing boards have empowered the MDB to issue to its members.²⁹ At any one time, most but not all of that authorized stock will actually have been issued to, and subscribed by, member countries. Such subscriptions are measured in shares of stock. But in subscribing to a certain number of shares of an MDB’s capital, a member country is not required to pay immediately for the total amount of its subscription. Instead, a certain portion (usually a fairly small portion in recent years) is paid-in capital, and

²⁹ From time to time the MDBs reassess the adequacy of their overall subscribed capital, in part because the amount of subscribed capital typically bears on the ability of an MDB to borrow funds on international markets. From this reassessment often comes a general capital increase (GCI) under which all the members are invited to increase their individual subscriptions in an amount that will allow each of them to maintain the same proportion of the MDB’s total subscribed capital as the proportion it held before the GCI. In addition, a member country may sometimes seek and obtain approval to increase its subscription under a special capital increase (SCI) in order to reflect an expanded economic importance attained by that country.

Box 3.7: MDB Resources: Getting Funds, and Lending Them, for Hard Loans
(arrows show the movement of funds)



Box 3.8: MDB Resources: Getting Funds, and Lending Them, for Soft Loans
(arrows show the movement of funds)



the remainder is callable capital. In most of the MDBs, the proportion of the subscribed capital that consists of paid-in capital is much smaller than the proportion of the subscribed capital that is callable. The reason for this is that the MDBs typically do not rely significantly on capital from their member countries in order to engage in their day-to-day operations (including the making of loans).³⁰ In the case of extraordinary financial circumstances (such as a large number of non-performing loans), the MDB might wish to make a “call” on the callable capital that member countries have pledged, but this has rarely, if ever, happened. (It has never happened, for example, in the IBRD or the AsDB, with which I am most familiar.)

If MDBs do not rely much on subscribed capital to make their loans to member countries, where do they get the money for this purpose? For their hard loans, as illustrated in Box 3.7, the MDBs rely on borrowings that they undertake in large volumes and in many financial markets.³¹ In this respect they behave much like ordinary private sector businesses or financial intermediaries: the MDBs issue various types of debt instruments (mainly medium-term and longer-term bonds) that investors purchase because of the attractive rates and low risk that they present; and the MDBs use the proceeds from those borrowings to make (hard) loans to their borrowing member countries.³² Later, of course, the MDBs will have to repay the bondholders; and correspondingly, the borrowing member countries will repay the loans to the MDBs.

The story is different for soft loans. To obtain the resources they need for soft loans, MDBs rely on contributions from member country governments, as illustrated in Box 3.8. Typically these contributions result from negotiations held every few years to replenish the special funds resources

³⁰ Nor do the MDBs rely on any sort of annual dues or other contributions from their member governments, as some international organizations do. Indeed, most of the MDBs, at least in their hard-lending operations, earn a modest profit each year. Of course, the earning of a profit is not one of the purposes of such institutions, but rather a by-product of their operations; accordingly, such profits are not returned to member countries in the way of dividends but instead are typically (1) used to support soft lending operations, to the extent permitted under the strict separation-of-accounts provisions described above or (2) transferred to the ordinary reserves of the institutions.

³¹ It is in recognition of this source of funds that some anti-globalist activists have proposed boycotting the purchase of MDB bonds by public institutions, in an effort to “bankrupt” the MDBs—that is, to undercut their ability to raise funds for lending operations. See Johann Hari, *Now the Protestors Box Clever: The Anti-Globalisation Activists Have a New Idea: To Bankrupt the World Bank*, 131 *NEW STATESMAN* 23 (2002).

³² When the funds obtained through an MDB’s borrowing program are not needed immediately for making disbursements under loans it has made, the MDB will invest those funds in various types of investment-grade instruments. Hence at any one time an MDB is a borrower, a lender, and an investor.

maintained by the MDBs. In the case of the IDA, for example, the most recent replenishment negotiations concluded in Washington, DC in February 2005 and yielded commitments totaling US\$33 billion over the next three years. Negotiations for another replenishment are, as of this writing, ongoing, with recent meetings held in Maputo, Mozambique in June 2007.

D. Membership and Institutional Matters

1. Membership in the MDBs

Like the IMF, the World Bank has nearly universal membership. Specifically, the IBRD has 185 members (as of July 2007), and the IDA has 166 members (also as of July 2007). Membership in the IBRD is dependent on membership in the IMF; that is, according to the IBRD Charter, a country cannot be a member of the IBRD without being a member of the IMF.

Membership in the regional MDBs varies, of course, in number and identity, but in all cases, their membership includes both regional and non-regional member countries. (For several years, the AfDB did not permit non-African countries to join as members, but now it does.) Typically, the non-regional member countries are economically developed countries, and their participation in any one of the regional MDBs reflects those countries' interest in the economic circumstances of the regional served by that MDB. From the perspective of an MDB, of course, the participation by non-regional members typically carries both advantages and disadvantages. A key advantage is the financial commitment that such a non-regional (usually wealthy) member country makes with its membership—not only by contributing to the subscribed capital of that MDB but also by its contribution of funds for technical assistance and soft-loan operations. A key disadvantage (to an MDB of non-regional participation) is the risk that regional control over the MDB may thereby be diluted. To contain this risk, the regional MDB charters typically establish a ceiling on shareholdings by non-regional member countries. For example, the AsDB Charter requires that shareholdings of capital by regional members be maintained at least 60 percent.

As noted earlier, an incentive for relatively wealthy countries to join the MDBs (from which they obviously will not be eligible to receive loans) is that membership triggers eligibility to bid on contracts for the supply of goods and services, including consulting services, for the projects being financed by those MDBs. Partly as a consequence of this incentive, as well as for other reasons, the participation by economically developed countries in the membership of the regional MDBs is fairly widespread, as shown in Table 3.2.

Table 3.2
Membership in the Regional MDBs

	Regional Members	Non-Regional Members	Total Members
IADB	26	21	47
AfDB	53	24	77
AsDB	48	19	67
EBRD	30	33	63

Note: The EBRD has two institutional members—the European Community (as it was called when the EBRD was formed) and the European Investment Bank. They are included here in the figures for “non-regional” members.

Source: Information provided here comes mainly from the Web sites of the four regional MDBs and is intended to be current as of mid-2007.

Two other important membership issues warrant a brief explanation. The first relates to the classification of regional developing member countries. Most of the MDBs follow a classification system that identifies which countries are eligible to receive soft loans, which are eligible to receive “blended” loans (partly soft and partly hard), and which may only receive hard loans. The classification system is based typically on per capita gross national product (GNP) and debt repayment capacity. In some cases developing member countries are ineligible to receive any loans (hard or soft) because they have “graduated” from eligibility based on the strength of their economic circumstances.

A second important membership issue relates to the set of privileges and immunities accorded the MDBs by their charters. Like membership in the IMF, MDB membership carries with it the obligation to grant certain privileges and immunities to the MDB itself—for example, exemption from national or local taxes, immunity from judicial process, and inviolability of archives—as well as certain privileges and immunities to MDB staff members. In general, such privileges and immunities are intended to underscore the stature of the various MDBs as independent legal entities with some of the same attributes as nation-states.

Lastly, some curiosities of MDB membership are noteworthy. For one thing, the membership of China in the MDBs now rests with the PRC rather than with the Republic of China, although in the AsDB, some pecu-

liar arrangements persist.³³ For another, a few countries in central Asia are, for largely historical reasons, regional members of more than one regional development bank—namely, both the EBRD and the AsDB. Another interesting feature relating to MDB membership is that although most members are independent nation-states, at least one regional MDB—the AsDB—can have “dependent territories” as members; and it was under this feature that the AsDB first admitted as members Hong Kong, Papua New Guinea, Cook Islands, Fiji, Kiribati, and Solomon Islands.

2. Structure of and Decision Making in the MDBs

The MDBs are structured similarly to the IMF. As explained above, the weighted voting system sits at the center of that structure. Just as in the case of the IMF, the MDBs follow a weighted voting system that places most of the voting power in a handful of countries. The IBRD Charter, for example, provides that each member “shall have 250 votes plus one additional vote for each share of stock held”. Given the wide variation in stockholdings in the MDBs—ranging, for example, in the AsDB from (equal) 15.6 percent shareholdings by the USA and Japan to 0.3 percent for Bangladesh—the distribution of voting power in the institutions bears no relation to population or territorial size of the member countries but rests almost solely on the share that each country was allowed to subscribe to upon gaining membership (or upon negotiating an increase in that subscription later).

In many day-to-day operations, the weighted voting system plays little role in decision making because the proposals to finance projects or adopt policies are typically reviewed carefully in advance, and modified as necessary, to obtain a consensus of the members before being submitted for formal approval. Nonetheless, the weighted voting system does get reflected in many tangible ways. For example, the composition of an MDB’s Board of Executive Directors (or, in at least one MDBs, named simply the Board of Directors) reflects the weighted voting system by having some directorships allocated to single countries—the USA in nearly all of the MDBs, for example, and Japan and the PRC in some of the MDBs—and all other directorships shared among “constituencies” of countries with smaller voting powers. The AsDB, for instance, has three single-member seats at its Board of Directors (for the USA, Japan, and the PRC), and other seats

³³ One rather curious aspect of the arrangements settled on when the PRC joined the AsDB in the mid-1980s is that all references in AsDB documents to the former Republic of China now are to appear as “Taiwan,China” with no space following the comma. Another is that instead of having to choose which Chinese flags to fly, the AsDB decided not to fly any flags in front of its headquarters building. This resulted in several dozen empty flagpoles.

shared by groups of other member countries ranging in number from four to nine. In the IBRD, several constituencies include more than two dozen countries.

When voting does take place, a simple majority of the votes cast is usually adequate to take action. However, supermajorities or qualified majorities are required for certain important actions, such as amending an MDB's charter or increasing the size of the Board of Executive Directors or suspending a member of the MDB.

In addition to resembling the IMF in terms of the weighted voting system, the MDBs resemble the IMF also in terms of structure. In each case, all powers of the MDB are granted to a Board of Governors, which includes one seat for each member. Those Governors are responsible for setting the overall policy of the institution, and they typically meet once each year to do so. Actual supervision of each of the MDBs, including the approval of specific financial operations, is carried out by the smaller board referred to above: the Board of Executive Directors (or in at least one case simply the Board of Directors—a distinction that in some cases makes a difference³⁴).

The Board of Executive Directors (or Board of Directors) of an MDB typically consists of a couple dozen individuals, most of whom represent “constituencies” of member countries as described above. These boards typically meet on a weekly or twice-weekly basis most of the year, and it is in these meetings that the board members have formal interactions with the MDB's staff members. Staff members, appointed in nearly all cases by the MDB's president, range broadly in their areas of expertise—from rural credit to aquaculture development to forest protection to project engineering to country studies to accountancy to legal drafting, and so forth. Although the MDBs typically renounce any form of nationality quota system in hiring staff members, efforts are usually made to have a broad representation of members on the staff, a point that some of the MDB charters explicitly encourage.

As with the IMF, the MDBs are self-contained in the sense that they do not report to or fall under the authority of any other entity, either national or international. Their governing boards have authority to interpret their own charters in the same way that the IMF has authority to interpret its own charter, a matter that will be explored more below in Chapters Three and

³⁴ For example, the AsDB Charter establishes a “Board of Directors”, not a “Board of Executive Directors”, and partly because of that difference in terminology, the AsDB Board of Directors has been rebuffed in its efforts to claim more executive authority from the president than he thought was warranted under the AsDB Charter provisions placing executive functions with the president.

Four. In recent years, however, several of the MDBs have taken initiatives to permit some form of review of their actions. In the case of the IBRD and the IDA, for example, such review function is carried out by the World Bank Inspection Panel, established in September 1993. The World Bank Inspection Panel, comprising three persons acting with substantial independence from the World Bank's management, has as its primary purpose to address the concerns of people who might be affected by World Bank projects and to ensure that the Bank adheres to its operational policies and procedures in the design, preparation, and implementation of such projects.

E. Other Aspects of MDBs and Their Operations

1. Policies and Initiatives

From their inception, the MDBs have had certain policies that reflect their character as financial institutions designed to facilitate economic development. These policies address such issues as co-financing (the process by which an MDB and a borrower will find other official or commercial sources of financial support for a project), coordination with other aid agencies, and procurement (as discussed briefly above in this “nutshell” account of the MDBs).

In recent years, however, the MDBs have experienced an explosion in the number and variety of policies and initiatives that they have adopted and undertaken to implement. Especially with the gradual expansion of MDB operations into the type of policy-based lending described above in subsection IIIA of this chapter, it is common today to find the MDBs requiring their borrowing member countries to accept and adhere to prescribed policies on environmental protection, indigenous peoples, involuntary resettlement, governance, corruption, public participation, the role of women in development, and poverty reduction.

2. The Generational Character of the MDBs

In the introductory remarks to this “nutshell” account of the MDBs, I posited that although they differ in important ways, it is appropriate to offer a unified picture of the six MDBs—the IBRD (chartered in 1944), the IDA (chartered in 1960), the IADB, AfDB, and AsDB (all chartered between 1959 and 1965), and the EBRD (chartered in 1990)—because they all share what I called there “the same fundamental precepts and structures that are most important for evaluating the criticisms currently leveled against them”. In this last portion of my “nutshell” account of the MDBs, I wish to emphasize two important differences among the MDBs.

The first difference is obvious: the first two of them as listed above (the IBRD and the IDA) are global in their reach, and the other four of them are regional in character. This fact has caused by far the most scrutiny and criticism to be directed toward the IBRD and the IDA, which together form the World Bank. This lopsided scrutiny might be unfortunate, because some of the regional MDBs are probably more deserving of constructive criticism than is the World Bank.

The other difference among the MDBs that I wish to emphasize is temporal in nature: they were established at different times, reflecting changing needs and influences. In my view, the MDBs should be viewed as “generational” in character, with three generations now having run their course, or nearly so. The first generation is represented by the IBRD, born in the closing days of World War II with the reconstruction of Europe as its main priority. As noted earlier in this chapter, the fact that the US government soon took over the bulk of that task under the Marshall Plan prompted (in part) the IBRD to focus its attention more on the “D” in IBRD—that is, economic development in its non-European member countries.

A second generation began around 1960 to cater better to the needs of less developed countries. With the rapid emergence of many new states following the massive decolonization of the 1940s and 1950s, the IBRD found itself unable to provide as much useful assistance as was needed in those new states because IBRD loans carried market-based interest rates. As also explained earlier, it was against this backdrop that the IDA was established in 1960 as a companion to the IBRD—yielding the two institutions we now call the World Bank—to provide cheaper money through “soft loans” available to less developed countries. At about the same time (between the late 1950s and the mid-1960s), the IADB, the AfDB, and the AsDB were formed as regional sources of development financing, and all three of these regional MDBs sooner or later developed the same authority to make “soft loans” that the IDA makes.

The EBRD represents a third generation in the evolution of the MDBs. This institution, formed about three decades after the IDA and the earliest of the regional MDBs, introduced several novel features into the operations of MDBs. Instead of prohibiting any consideration of political factors, as the charters of the earlier MDBs do, the charter of the EBRD expressly adopts (in Article 1) a political mandate requiring the institution to take concrete steps to assist the countries of its operations—originally a handful of eastern and central European states newly released from the Soviet sphere of influence³⁵ and now a couple of dozen states reaching from cen-

³⁵ The EBRD’s original countries of operation were the USSR, Bulgaria, Czechoslovakia, the German Democratic Republic, Hungary, Poland, Romania, and Yugoslavia.

tral Europe across to central Asia—in making their transition from Communist political control to an embrace of “the principles of multiparty democracy [and] pluralism”. The EBRD Charter also included two other mandates absent from the charters of the earlier MDBs. Its economic mandate requires the EBRD “to foster the transition toward open market-oriented economies” in its countries of operation. Its environmental mandate requires the EBRD to “promote in the full range of its activities environmentally sound and sustainable development”.

The establishment of the EBRD was a blatant manifestation of a trend that had already begun in the other MDBs. It was a trend toward using the MDBs as instruments of global policy guidance or influence—or what I would call global policy regulation. This trend is exemplified by the gradual expansion of MDB operations into policy-based lending (described in the opening paragraphs of this “nutshell” account of the MDBs) and by the wide variety of policies and initiatives they have adopted. As noted above, the policies and initiatives address environmental protection, indigenous peoples, involuntary resettlement, governance, corruption, public participation, gender issues, and poverty reduction.

Given these developments, I believe the MDBs should be regarded as having been transformed from mere financial institutions into regulatory agencies—that is, into agencies involved in global policy “regulation”.³⁶ They still carry out development banking functions, of course, but those banking functions have increasingly become instruments for achieving regulatory aims. I return to this topic in Chapter Four, where I explain and evaluate the “Mission Creep” criticism directed at the MDBs.

³⁶ My use of the terms “regulation” and “regulatory agency” in this context might be questioned, since “regulation” connotes the notion of some entity (a regulator) that is formally authorized to assert jurisdiction over some other entity (a regulatee), and MDBs do not enjoy the same degree of such authority as regulatory agencies typically do in a national setting. I agree with those points, and I would even add another point that further differentiates MDBs from most national regulatory agencies: in the case of the MDBs, the entities to which the policy guidance applies are themselves members of the MDBs and participate in the formulation of the policies. Despite these points, however, I still believe the MDBs can usefully be regarded as “regulatory agencies”, defined liberally. After all, the aims and effects of the MDBs’ policy guidance are generally the same as the aims and effects of regulations issued by national regulatory agencies—to regularize conduct on a variety of topics so as to conform to formally adopted standards. I believe the fact that the MDBs have increasingly been used in recent years to announce such standards of conduct on a wide variety of topics and to apply those standards (at least vis-à-vis borrowing member countries) makes it appropriate to regard them as engaging in “regulatory” activities.

3. *Debt Relief*

In the past few years the World Bank has, like the IMF, entertained the proposal that some of the repayment obligations of some of its borrowers should be relaxed or even forgiven. As noted above, the MDRI allows for the 100 percent cancellation of debt that certain qualifying countries owe to the IDA; and several countries have already taken advantage of that initiative. Under the MDRI, it is estimated that the IDA will provide approximately US\$37 billion in debt relief over forty years. In order to provide funds for the debt relief, the IDA will rely on existing and future financial commitments by donor members.

IV. THE WTO IN A NUTSHELL

As noted above in section I of this chapter, the problems of the interwar period relating to trade—especially the competitive raising of tariff rates—were to be addressed by the ITO. That would-be entity was never formed. In its stead, however, the 1947 GATT, originally simply a treaty intended to govern the transitional period leading to the existence of the ITO, took on the trappings of an international organization itself, without such status as a formal matter. In this capacity, the GATT served as the triggering influence for several rounds of negotiations among the GATT parties, including the Uruguay Round completed in 1993. It was from that Uruguay Round of negotiations that a broad collection of new treaties appeared, mainly addressing international trade relations but also addressing numerous related matters. One of those treaties established the WTO, the most recent—and in some ways most surprising—of the GEOs.

An understanding of the WTO therefore requires some familiarity with (1) the principles and the operations of the GATT through the forty-five-plus years that began with its creation in the late 1940s, (2) the series of negotiating rounds that culminated in the Uruguay Round and the WTO itself, and (3) certain peculiarities and institutional novelties that distinguish it from the other GEOs. I offer some explanations of those points below.

Before doing so, however, it is perhaps worth pausing to consider why we need to consider the WTO, and international trade relations, at all. How do trade matters relate to development in general, and to the Global Development War in particular?

The answer lies partly (1) in the foundations of all the GEOs, going right back to the 1940s, and partly (2) in the close practical and institutional relationship today between the World Bank, the IMF, and the WTO. First, recall the underlying philosophy that motivated the Bretton Woods

delegates: they wished above all to avoid a World War III. Doing so, they thought, required “getting right” certain economic matters in the post-war world. One of them was to ensure that Europe was quickly rebuilt, not left to fester, and that economic development was spurred elsewhere in the world as well. Another was to encourage world trade, on grounds that doing so could reduce the likelihood of conflict. “World peace through world trade” was one phrase used to capture this philosophy—and the IMF Charter expressly endorsed this view by identifying in its Article I the overriding purpose to “facilitate the expansion and balanced growth of international trade”. So even though the IMF is a monetary institution, its aims are directly complementary to those of a trade institution, namely the WTO. And both are seen as involved importantly in the business of development—less directly than is the World Bank, but importantly nonetheless. The relationship among the institutions and their shared concern for development is reflected in a recent IMF assertion that “[t]rade is potentially much more important than aid in helping developing countries prosper”.³⁷

Second, recognizing this complementarity, the three institutions—the IMF, the WTO, and the World Bank—regard themselves, and are regarded by others, as working together as a team. For better or for worse, they are part of the same package. Hence, many critics of one are also critics of the others.

A. The GATT 1947

1. Aims and Principles

According to the GATT itself, the countries that created it recognized (in the treaty’s preamble) “that their relations in the field of trade and economic endeavor should be conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, developing the full use of the resources of the world and expanding the production and exchange of goods”. In an effort to contribute to those objectives, the countries creating the GATT announced that they were “entering into reciprocal and mutually advantageous arrangements directed to the substantial reduction of tariffs and other barriers to trade and to the elimination of discriminatory treatment in international commerce”. Expressed simply, commercial intercourse among nations was regarded as a key aim in a post-war world, and that aim was to be achieved through breaking down the barriers to trade that had been built during the inter-war years.

³⁷ International Monetary Fund, *IMF IN FOCUS*, Sept. 2006, at 31.

How were the barriers to be broken down? Through the application of four central principles established in the GATT: bound duty rates, most-favored-nation (MFN) treatment, national treatment, and an attack on non-tariff barriers. I shall briefly summarize each of these principles.

The *bound-duty-rate principle* appears in Article II of the GATT, which asserts that (subject to certain exceptions) each GATT party “shall accord to the commerce of the other contracting parties treatment no less favourable than that provided for in the . . . appropriate Schedule annexed to this Agreement”. The weighty set of schedules then gave the details, on a country-by-country basis, of tariff ceilings that had emerged from negotiations among the parties. Under Article II, a country could charge a tariff (duty) on a particular item that was less than or equal to the rate established in that country’s schedule for that item, but it could not charge a higher tariff. Of course, any one country’s tariff rate on a specific item would probably differ substantially from both (1) the tariff rate it charges on the importation of other items and (2) the tariff rate that other countries would charge on the importation of that item into their territories—but Article II binds a GATT party not to let its tariff levels rise above those it negotiated under the auspices of the GATT.

The *MFN treatment principle*, expressed simply, asserts that a country shall accord identical tariff treatment to imports from all other contracting parties, and that treatment must be the best that it gives to any state (GATT party or not). A state cannot give State X the benefit of an especially low tariff rate on a particular item without giving that same benefit to all GATT parties. Moreover, this non-discrimination rule, found in GATT Article I, does not turn on reciprocity: “any advantage . . . granted by any contracting party to any product originating in . . . any other country shall be accorded immediately and unconditionally to the like product originating in . . . the territories of all other contracting parties”.

The *national-treatment principle* resembles the MFN treatment principle in its central aim—to eliminate discrimination between products based on their country of origin. But whereas the most-favored-nation treatment principle prohibits a GATT party from discriminating against goods that it imports from one country imports versus goods that it imports from another country, the national-treatment principle prohibits a GATT party from discriminating against goods that it imports (from whatever country) in favor of goods that are produced locally. Under this principle, stated most clearly in paragraph 4 of Article III of the GATT,³⁸ a store-owner in a

³⁸ The pertinent provision reads: “The products of the territory of any contracting party imported into the territory of any other contracting party shall be accorded treat-

GATT country could not be permitted to charge a special “foreign goods” tax on the sale of an item, or on its transportation, merely because that item was imported. Another difference, of course, between the MFN treatment principle and the national-treatment principle is that the former operates at the point of an article being imported into a country, whereas the latter prohibits certain behavior after the point of importation.

The fourth key principle established in the GATT in 1947 is what I refer to as the *anti-NTB principle*. Found in Article XI, this principle is intended to prevent countries from circumventing the GATT’s overall aim by first reducing their own tariffs but then reintroducing protectionism in a more disguised way via non-tariff barriers (NTBs). To provide protection against such behavior, Article XI disallows (subject also to certain exceptions) a GATT party to impose “prohibitions or restrictions other than duties, taxes or other charges . . . on the importation of any product of the territory of any other contracting party”. The most obvious NTB would be a quota imposed by a government on the importation of a particular article into its territory. Other NTBs include such things as complex or restrictive import licensing procedures, safety and environmental standards, import testing requirements, customs procedures, and valuation of goods for customs purposes.³⁹

Thus, the “bound-duty-rate” principle of Article II and the “anti-NTB principle” of Article XI combine to limit a GATT party’s ability to raise barriers to trade: Article II prohibits the charging of any rates above the ceilings negotiated and recorded in the applicable schedule; and Article XI disallows an effort to circumvent that prohibition by imposing a NTB instead. Indeed, these two principles combine with the main work of the GATT during its first three decades—the sponsoring of various rounds of trade negotiations—to establish this game plan: eliminate NTBs, put a ceiling on existing tariff rates, and then gradually work to ratchet those tariff rates downward, all with the ultimate aim of increasing international commercial activity.

ment no less favourable than that accorded to like products of national origin in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use”.

³⁹ A recent example of an NTB, and of WTO action to declare it incompatible with GATT obligations, emerged from the *Beef Hormones* case, in which an EU ban on imports from Canada and the USA of beef that had been given growth-enhancing hormones met disapproval on grounds that the ban, purportedly imposed on health concerns, was not adequately supported by scientific evidence that such beef would harm humans.

2. *Exceptions to GATT Principles*

In addition to certain specific exceptions included in the provisions establishing the four principles noted above—that is, the bound-duty-rate, MFN treatment, national-treatment, and anti-NTB principles—the GATT also includes several more sweeping exceptions to the application of its rules for a liberalized trade regime. Six are important enough to warrant discussion even in so brief an account as this. They are the exceptions allowing for (1) the imposition of anti-dumping duties, (2) the imposition of countervailing duties to counteract subsidies, (3) the taking of emergency action in the face of a flood of imports, (4) the enforcement by GATT parties of certain types of national measures relating to health, public morality, environmental protection, and a few other categories of concern, (5) the granting of more favorable tariff treatment to countries within a free trade area, and (6) the granting of more favorable tariff treatment to less economically developed countries.

The *first* of these exceptions permits a GATT party to impose additional duties, even if doing so would otherwise violate the bound-duty-rate principle of Article II, in response to the “dumping” in that country’s territory of foreign-made goods. For GATT purposes, “dumping” occurs not only when the imported goods are sold at less than the cost of their production (this is a fairly obvious form of “dumping”) but also when the imported goods are sold in the country of importation at a price that is lower than the price at which they are sold in the country of origin (for use in that country). If such pricing behavior is a contributing cause of material injury to the relevant domestic industry in the country of importation, then that country can legally impose anti-dumping duties in an amount equal to the margin of dumping.

The *second* of the exceptions also permits tariff increases on certain products, but in this case, the issue is not price discrimination between national markets (as is the case with anti-dumping duties) but rather subsidies that artificially lower the price of imported goods and thereby give such goods an unfair advantage in competing with domestically produced goods in the country of importation. In general terms, a subsidy is a financial contribution, usually by a government entity, that provides some benefit in the production or export of an article. While recognizing that some sorts of government subsidies are appropriate, or at least inescapable, the GATT provides that a country whose relevant domestic industry suffers material injury as a result of such a subsidy may, in most cases, impose a countervailing duty (in the same amount as the value of the subsidy) so as to level the playing field in the competition between imported goods and domestically produced goods.⁴⁰

⁴⁰ As noted below, extensive rules expanding on the main GATT provisions on anti-

At least to some people (especially domestic producers), both dumping and subsidies create unfairness in the competition between imported goods and domestically produced goods. From the perspective of consumers, of course, it would appear to be beneficial, at least in the short run, for foreign companies to dump their goods in the consumer's country, or for foreign governments to subsidize goods bound for the consumer's country, inasmuch as both dumping and subsidies would tend to lower prices to the consumer. This (short-term) consumer perspective⁴¹ has not prevailed, however, and the GATT clearly permits countries of importation to impose special tariffs that offset dumping and subsidies.

In the case of the *third* type of exception I mentioned above—emergency action in the case of a flood of imports—there is no element of unfairness involved. Even if a foreign company is not dumping goods in Country X, and even if a foreign government is not subsidizing goods being sold in Country X, a rapid rise in the volume of those goods being imported into Country X can be grounds for that country's government to restrict those imports, whether by raising tariffs on them or by imposing non-tariff barriers against them such as quotas. This exception, found in GATT Article XIX, acts as like a circuit breaker in a house: just as a circuit breaker prevents a sudden surge of electricity from destroying the electrical system in a house, so the “emergency action” provision prevents a sudden surge of imports from destroying a domestic industry. One difference, of course, in the two settings is that electrical power surges are usually short-lived, whereas a surge in the pressure of imports to enter a country may continue unabated, as in the case of a dramatic improvement of the exporting country's competitive advantage in producing a particular article. Article XIX, sometimes referred to as the “escape clause”, allows only temporary relief from such imports, reflecting the basic ideology of the GATT that more international trade produces net benefit overall.

dumping and countervailing duties were adopted in both the Tokyo Round and the Uruguay Round of trade negotiations. The treaty emerging from the Uruguay Round on subsidies and countervailing duties is called the Subsidies and Countervailing Measures Agreement, or “SCM Agreement”. That treaty, in a nod toward environmental protection, included some “environmental retrofit” provisions under which subsidies made by a government to help a company or industry replace old equipment with more environmentally friendly equipment was non-countervailable.

⁴¹ It is open to debate whether subsidies provided by a foreign government on goods imported into another country hurt or benefit consumers of that importing country in the *long* term. A common argument for the proposition that such subsidies will in fact hurt such consumers in the long term is that the competition from the subsidized (imported) goods might kill off the competing domestic industry in the consumers' country, leaving the country (and its consumers) vulnerable to massive price increases or even interruptions of supply from the country producing the goods.

The *fourth* of the six exceptions, for our purposes, to the key GATT principles described above appears in Articles XX and XXI of the GATT. Article XX enumerates several types of national regulatory measures—focusing mainly on public health, morals, and resources—with which GATT obligations should not interfere. Under that provision, as long as such measures “are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries . . . , or a disguised restriction on international trade, nothing in [the GATT] shall be construed to prevent the adoption or enforcement by any contracting party” of measures necessary to protect public morals, to protect human, animal, or plant life or health, relating to the products of prison labor, imposed to protect national artistic, historic, or archaeological value, or relating to the conservation of exhaustible natural resources. In addition, Article XXI focuses on national security. It provides that the GATT should not be construed to prevent any contracting party from taking action it considers “necessary for the protection of its essential security interests” in “time of war or other emergency in international relations”.

A *fifth* exception permits countries to establish “free-trade areas”. In general terms, a free-trade area comprises two or more countries that agree by treaty to give each other tariff treatment that is better than MFN treatment. Doing so would violate the MFN-treatment principle but for the special permission of GATT Article XXIV, which “recognize[s] the desirability of increasing freedom of trade by the development . . . of closer integration between the economies of the countries parties to [free trade] agreements” and therefore permits the formation of such an area so long as the tariffs and other regulations applicable to goods from non-participating countries are “not . . . higher or more restrictive” than those “existing in the . . . constituent territories prior to the formation of the free-trade area”. It is under the auspices of this provision that the special trading blocs of countries in Europe (today taking the form of the EU) and in North America (via the North American Free Trade Agreement (NAFTA)) are GATT-legal.

Lastly, a *sixth* exception to the four key principles summarized above permits countries to establish preferentially low tariff rates for less developed countries. As with free-trade areas, discussed immediately above, lowering tariff rates below the MFN level for goods from some but not all GATT parties would violate the MFN treatment principle if not for the special permission granted in the GATT to do so. In the case of less developed countries, however, such special permission was not written into the GATT in 1947, but rather added a couple of decades later with the establishment of the Generalized System of Preferences (GSP). Today scores of less developed countries are thus eligible to have their goods enter duty free into the

markets of rich countries, including the USA—although, ironically, the magnitude of this benefit has gradually diminished over time with the general lowering of tariff rates worldwide.

B. Negotiating Rounds and Other Developments

1. Tokyo, Uruguay, and Doha

A particularly visible GATT activity—or, more recently, WTO activity—has been the sponsorship of various “rounds” of trade negotiations. At first, these negotiations focused mostly on what I referred to earlier as the “ratcheting downward” of tariff rates. Over the course of six rounds of negotiations that were conducted in the first two decades of the GATT’s existence, the average tariff rates (taking into account all articles and all participating countries) were lowered substantially from the very high levels that had existed in the inter-war years.

The Tokyo Round of negotiations of the late 1970s added another feature: the creation of several side agreements, referred to as “codes”, that elaborated on GATT provisions, with special attention to non-tariff barriers. For example, detailed rules on the imposition of anti-dumping duties and of countervailing duties, referred to in the preceding subsection, were set forth in such codes. Other important Tokyo Round codes related to technical barriers to trade, government procurement, and customs valuation. Importantly, the Tokyo Round negotiators settled on what has been called an “a la carte” approach regarding these codes: countries were invited and encouraged to adopt them, but no requirement to do so was imposed.

This approach changed with the Uruguay Round, launched in 1986 and concluded in 1993. As described more fully in the next subsection, the Uruguay Round produced about a score of treaties that were offered on a “single-package” basis: in order to become a member of the WTO (established as the institutional successor to the GATT), a country had to agree to all of the Multilateral Trade Agreements (that is, all but four of the treaties emerging from the negotiations). The Uruguay Round departed also in another fashion from the preceding rounds of negotiations by covering several topics lying outside the GATT’s traditional focus on trade in goods. As explained in the following subsection, these topics included trade in services, intellectual property rights, and protection of foreign investment.

The most recent round of GATT/WTO trade negotiations, the Doha Round, was launched in 2001. The Doha negotiations have suffered several significant setbacks, including the collapse of a WTO Ministerial Conference

in Cancún in 2003, partly over disagreements on agricultural subsidies. Later progress was made in this area, but continuing disagreements on agricultural issues so far have proved insuperable. Indeed, as of the summer of 2007, the Doha Round had largely broken down, despite efforts among the “Group of Four” (the USA, the EU, Brazil, and India) to iron out major differences on agricultural issues.

2. *The Uruguay Round Agreements*

The most significant development in international trade law over the past several decades—probably since the creation of the GATT itself in 1947—is the conclusion of the Uruguay Round in 1993, for emerging from that round of negotiations was a score of treaties, a new international organization, and a further general reduction of tariff levels. For example, average tariff rates imposed by developed countries on dutiable manufactured imports were cut from a little over 6 percent to just under 4 percent. The Uruguay Round results also signaled a recommitment—at least temporarily—to multilateralism in international trade relations after a period in which multilateral approaches seemed to have been supplanted by regional and bilateral approaches to trade regimes.⁴² One source offers this one-paragraph summary of the Uruguay Round:

In 1986, the “Uruguay Round” of multilateral trade negotiations began at a Special Session of the GATT Contracting States. This Uruguay Round included separate negotiations on trade in goods and on trade in services, with separate groups of negotiators dealing with each topic. Subtopics for negotiation by subgroups included nontariff barriers, agriculture, subsidies and countervailing duties, intellectual property rights and counterfeit goods, safeguards, tropical products, textiles, investment policies, and dispute resolution. The negotiating sessions were extraordinarily complex, but were able to achieve a successful conclusion, giving birth to the World Trade Organization in 1995.⁴³

⁴² I explained in Chapter One the general distinction between multilateral, bilateral, and regional approaches to international economic relations. In the area of trade policy specifically, the early 1990s revealed a preference for regional trade regimes, as evidenced by the increasing strength of the EU and by the establishment of the NAFTA. Bilateral approaches to trade relations have long taken the form of bilateral “friendship, commerce, and navigation” (FCN) treaties. As GATT weaknesses became more pronounced in the 1980s, these alternatives to multilateralization gained momentum.

⁴³ Ralph H. Folsom, Michael Gordon Wallace, and John A. Spanogle, *INTERNATIONAL TRADE AND ECONOMIC RELATIONS IN A NUTSHELL* 40 (3d ed. 2004).

The “successful conclusion” referred to in the quoted passage included the establishment of these treaties, all of them subject to the “single package” approach explained above:⁴⁴

- GATT 1994
- Agreement on Agriculture
- Agreement on the Application of Sanitary and Phytosanitary Measures
- Agreement on Textiles and Clothing
- Agreement on Technical Barriers to Trade
- Agreement on Trade-Related Investment Measures (the TRIMs Agreement)
- Agreement on Implementation of Article VI of the GATT 1994 (relating to customs valuation)
- Agreement on Implementation of Article VII of the GATT 1994 (relating to dumping)
- Agreement on Preshipment Inspection
- Agreement on Rules of Origin
- Agreement on Licensing Procedures
- Agreement on Subsidies and Countervailing Measures (the SCM Agreement)
- Agreement on Safeguards
- General Agreement on Trade in Services (GATS)
- Agreement on Trade-Related Aspects of Intellectual Property Rights (the TRIPs Agreement)
- Understanding on Rules and Procedures Governing the Settlement of Disputes (the DSU)
- Trade Policy Review Mechanism
- Agreement Establishing the World Trade Organization

Of these treaties, the only one for which some explanation is needed here is the GATT 1994. That treaty is nearly the same as the GATT 1947 that has been described above. It has, for instance, the same four key principles and the same exceptions that were summarized above. It differs from the GATT 1947 only in two minor two respects: first, the GATT 1994 excludes the Protocol of Provisional Application by which the GATT came

⁴⁴ In addition to these Multilateral Trade Agreements, another four “Plurilateral Trade Agreements” emerged from the Uruguay Round. These were not subject to the “single package” approach described above—that is, countries could become WTO members without adopting these four treaties—and they are, for several reasons, of little direct importance to us for purposes of this summary. They are the Agreement on Trade in Civil Aircraft, the Agreement on Government Procurement, the International Dairy Agreement, and the International Bovine Meat Agreement.

into force in 1948; and second, it incorporates, by reference, numerous interpretations of and amendments to the GATT 1947.

C. Institutional and Structural Matters

1. The Nature of the WTO and the WTO Charter

The WTO is similar in some fundamental respects to the IMF and the MDBs. On the other hand, the WTO differs importantly from the IMF and the MDBs—and, indeed, from the ITO whose creation was envisioned but aborted in the late 1940s.

The key similarity is that the WTO, as created in 1995 following the approval of the Uruguay Round agreements, constitutes an international organization. The GATT did not. As explained above, the GATT was, as a technical matter, merely a treaty designed to have rather temporary application pending the creation of the ITO. When the plans for an ITO were scrapped, the GATT gradually took on the mantle of international trade liberalization, but it was limited as an institutional and legal matter because it lacked the status of an international organization.⁴⁵ The WTO overcomes that limitation, a point made explicit in Article IX of the WTO Charter, which provides that the WTO “shall have legal personality” and shall be accorded by its members the legal capacity and privileges and immunities appropriate to its stature as an international organization.

A key difference distinguishing the WTO from other GEOs is the “bare-bones” nature of its charter. Instead of incorporating into the WTO Charter itself detailed rules regarding international trade regulation—as was the case in, say, the IMF Charter with its detailed rules relating to national currencies—the Uruguay Round negotiators kept such substantive matters as these outside the WTO Charter (placing them instead in the multitude of treaties enumerated earlier) and confined the WTO Charter provisions just to those institutional and procedural matters necessary to establish and run the organization. Moreover, in doing so, the negotiators left most authority over international trade regulation with the contracting parties themselves, as opposed to granting the WTO as an institution the authority to change or add to the rules or to initiate complaints over a member country’s adherence to those rules.

⁴⁵ Several initiatives were taken to address this limitation. One such initiative, as indicated in the “GEO Timeline” provided in subsection IA of this chapter, was the creation of the GATT Council to act between the sessions of the GATT contracting parties and to act as their delegate in decision making.

One source captures several of these points of similarity and difference, and summarizes the WTO's main mission, as follows:

The duties of the World Trade Organization are to facilitate the implementation, administer the operations and further objectives of [the Uruguay Round Agreements]. Its duties also include the resolution of disputes under the agreements [discussed below], reviews of trade policy and cooperation with the International Monetary Fund (IMF) and the World Bank. To achieve these goals, the WTO Agreement provides a charter for the new organization, creating a minimalist institution with limited capabilities, and no substantive or executive competence. The WTO as an institution, for example, has no power to bring actions on its own initiative. . . . Under the provisions of the WTO Agreement, only the Members of WTO can initiate actions via the Dispute Settlement Understanding [and enforcement] of WTO obligations is primarily through permitting Members to retaliate or cross retaliate against other members, rather than by execution of WTO institutional orders.⁴⁶

2. WTO Membership and Structure

Like the IMF and the World Bank, WTO membership stretches around the world. As of mid-2007, 150 countries had become WTO members (Vietnam was the most recent to join, in early 2007), with more countries still involved in accession negotiations. These negotiations establish the details of how various Uruguay Round treaties will be implemented by the incoming member. We can expect to see in the coming years the growth of WTO membership to include nearly all countries in the world. (One major country still currently outside WTO membership is the Russian Republic.)

Also like the IMF and the MDBs, the WTO has a governing structure that features several tiers.⁴⁷ The top tier in WTO governance is the Ministerial Conference, which meets biennially and is composed of representatives of all WTO members. The Ministerial Conference is responsible for authorizing new multilateral trade negotiations, to grant waivers of obligations to members in exceptional circumstances, to adopt interpretations of the trade agreements under WTO administration, and to carry out other WTO operations. As in the case of the boards of governors of the IMF and the World Bank, however, most of the functions of the Ministerial Conference

⁴⁶ NUTSHELL, *supra* note 43, at 43–44.

⁴⁷ For a useful summary of WTO governance and decision making, see *id.* at 52–54, from which material is liberally drawn for the following synopsis.

are in practice performed by the General Council, which sits at the second tier of WTO governance. The General Council, which consists of representatives of all WTO members, has executive authority over the day-to-day operations of the WTO and meets whenever necessary.

The third tier of WTO governance consists of various councils, bodies, and committees that report to the Ministerial Conference or the General Council. These include most notably the Dispute Settlement Body and the Trade Policy Review Body. The first of these is described in the following subsection. The Trade Policy Review Body operates the Trade Policy Review Mechanism (TPRM), which aims to improve adherence to WTO agreements in part through a regular review, and public appraisal, of each WTO member's trade policies.

One matter that obviously distinguishes the WTO from the IMF and the MDBs is financial in character. The WTO makes no loans. As a consequence, the question of financial resources is very low profile. The total budget of the WTO Secretariat, which is funded through contributions by WTO members, is under relatively small—177 million Swiss francs for 2007, which amounts in US dollars (at a July 2007 exchange rate of CHF 1 = US\$ 0.83) to just under US\$150 million.

3. *Decision Making and Dispute Settlement*

Although some structural aspects of the WTO resemble those of the IMF and the MDBs, the rules on decision making and voting differ substantially from those of the other GEOs. Whereas the IMF and the MDBs use a weighted voting system, the WTO relies on a blend of consensus and a one-state-one-vote regime. The precise contours of this blend are not yet clear, because Article IX, paragraph 1 of the WTO Charter describes these two elements—consensus and the one-state-one-vote approach—in language that is too brief to be definitive: “The WTO shall continue the practice of decision-making by consensus followed under GATT 1947. Except as otherwise provided, where a decision cannot be arrived at by consensus, the matter at issue shall be decided by voting”.⁴⁸

At first glance the WTO's reliance (at least partially) on consensus would seem to reduce the likelihood of any tough decisions actually being made—a feature of the old GATT decision-making process that attracted much criticism (because it was possible for any single country in the GATT to block a decision, thus frustrating the will of the majority). But in fact this

⁴⁸ A footnote at the end of the first of these two sentences explains that “consensus” will be deemed achieved “if no Member, present at the meeting when the decision is taken, formally objects to the proposed decision”.

is not the case with the WTO. Thus far, the most important decisions to be taken by the WTO have arisen in the context of trade complaints made between various members about each other's policies. In that context, a special form of consensus is applied; it has been referred to as an "inverted consensus" approach because (unlike the situation under the old GATT rules) the adoption of a dispute panel report (or, on appeal, an Appellate Body report) is assured unless all members of the Dispute Settlement Body (a special assembly of the WTO General Council that includes representatives of all WTO members), including the WTO member that prevailed in the dispute, decide (by "consensus") to reject such a report. Such a decision to reject a report is so unlikely as to virtually guarantee that WTO determinations of trade violations will in fact take effect, thereby triggering one of several forms of "enforcement". In short, the dispute settlement provisions now have "teeth" that they lacked before the Uruguay Round.

In general, there are three methods by which a determination under the DSU that a country has violated its trade treaty obligations can be "enforced": (1) that country can stop the violative practice; (2) that country can, although continuing the practice, provide compensation to the prevailing party in the dispute in an amount that will offset the injury done to it by the practice; or (3) the prevailing party can, in the face of failure by the losing party to take either step (1) or step (2), impose retaliatory trade measures that would otherwise be inconsistent with its own trade treaty obligations.

Voting Power of IMF Member Countries and Constituencies

This Appendix presents two tables. Table A shows the quota and the voting power of each IMF member country, as of mid-July 2007. Table B shows IMF constituencies on the Board of Executive Directors, and the voting power held by each of the members of that Executive Board.

Member Country	Quota		Votes	
	Millions of SDRs	Percent of Total	Number	Percent of Total
Afghanistan, Islamic Rep. of	161.9	0.07	1,869	0.08
Albania	48.7	0.02	737	0.03
Algeria	1,254.7	0.58	12,797	0.58
Angola	286.3	0.13	3,113	0.14
Antigua and Barbuda	13.5	0.01	385	0.02
Argentina	2,117.1	0.97	21,421	0.97
Armenia	92.0	0.04	1,170	0.05
Australia	3,236.4	1.49	32,614	1.47
Austria	1,872.3	0.86	18,973	0.86
Azerbaijan, Republic of	160.9	0.07	1,859	0.08
Bahamas, The	130.3	0.06	1,553	0.07
Bahrain	135.0	0.06	1,600	0.07
Bangladesh	533.3	0.25	5,583	0.25
Barbados	67.5	0.03	925	0.04
Belarus	386.4	0.18	4,114	0.19

Table A
IMF Quotas and Voting Rights
(as of mid-July 2007)

Member Country	Quota		Votes	
	Millions of SDRs	Percent of Total	Number	Percent of Total
Belgium	4,605.2	2.12	46,302	2.09
Belize	18.8	0.01	438	0.02
Benin	61.9	0.03	869	0.04
Bhutan	6.3	0.003	313	0.01
Bolivia	171.5	0.08	1,965	0.09
Bosnia and Herzegovina	169.1	0.08	1,941	0.09
Botswana	63.0	0.03	880	0.04
Brazil	3,036.1	1.40	30,611	1.38
Brunei Darussalam	215.2	0.10	2,402	0.11
Bulgaria	640.2	0.29	6,652	0.30
Burkina Faso	60.2	0.03	852	0.04
Burundi	77.0	0.04	1,020	0.05
Cambodia	87.5	0.04	1,125	0.05
Cameroon	185.7	0.09	2,107	0.10
Canada	6,369.2	2.93	63,942	2.89
Cape Verde	9.6	0.004	346	0.02
Central African Republic	55.7	0.03	807	0.04
Chad	56.0	0.03	810	0.04
Chile	856.1	0.39	8,811	0.40
China	8,090.1	3.72	81,151	3.66
Colombia	774.0	0.36	7,990	0.36
Comoros	8.9	0.004	339	0.02
Congo, Democratic Republic of the	533.0	0.25	5,580	0.25
Congo, Republic of	84.6	0.04	1,096	0.05

Member Country	Quota		Votes	
	Millions of SDRs	Percent of Total	Number	Percent of Total
Costa Rica	164.1	0.08	1,891	0.09
Côte d'Ivoire	325.2	0.15	3,502	0.16
Croatia	365.1	0.17	3,901	0.18
Cyprus	139.6	0.06	1,646	0.07
Czech Republic	819.3	0.38	8,443	0.38
Denmark	1,642.8	0.76	16,678	0.75
Djibouti	15.9	0.01	409	0.02
Dominica	8.2	0.004	332	0.01
Dominican Republic	218.9	0.10	2,439	0.11
Ecuador	302.3	0.14	3,273	0.15
Egypt	943.7	0.43	9,687	0.44
El Salvador	171.3	0.08	1,963	0.09
Equatorial Guinea	32.6	0.02	576	0.03
Eritrea	15.9	0.01	409	0.02
Estonia	65.2	0.03	902	0.04
Ethiopia	133.7	0.06	1,587	0.07
Fiji	70.3	0.03	953	0.04
Finland	1,263.8	0.58	12,888	0.58
Gabon	154.3	0.07	1,793	0.08
Gambia, The	31.1	0.01	561	0.03
Georgia	150.3	0.07	1,753	0.08
Germany	13,008.2	5.99	130,332	5.88
Ghana	369.0	0.17	3,940	0.18
Greece	823.0	0.38	8,480	0.38
Grenada	11.7	0.01	367	0.02
Guatemala	210.2	0.10	2,352	0.11

Member Country	Quota		Votes	
	Millions of SDRs	Percent of Total	Number	Percent of Total
Guinea	107.1	0.05	1,321	0.06
Guinea-Bissau	14.2	0.01	392	0.02
Guyana	90.9	0.04	1,159	0.05
Haiti	81.9	0.04	1,069	0.05
Honduras	129.5	0.06	1,545	0.07
Hungary	1,038.4	0.48	10,634	0.48
Iceland	117.6	0.05	1,426	0.06
India	4,158.2	1.91	41,832	1.89
Indonesia	2,079.3	0.96	21,043	0.95
Iran, Islamic Republic of	1,497.2	0.69	15,222	0.69
Iraq	1,188.4	0.55	12,134	0.55
Ireland	838.4	0.39	8,634	0.39
Israel	928.2	0.43	9,532	0.43
Italy	7,055.5	3.25	70,805	3.20
Jamaica	273.5	0.13	2,985	0.13
Japan	13,312.8	6.13	133,378	6.02
Jordan	170.5	0.08	1,955	0.09
Kazakhstan	365.7	0.17	3,907	0.18
Kenya	271.4	0.12	2,964	0.13
Kiribati	5.6	0.003	306	0.01
Korea	2,927.3	1.35	29,523	1.33
Kuwait	1,381.1	0.64	14,061	0.63
Kyrgyz Republic	88.8	0.04	1,138	0.05
Lao People's Democratic Republic	52.9	0.02	779	0.04
Latvia	126.8	0.06	1,518	0.07

Member Country	Quota		Votes	
	Millions of SDRs	Percent of Total	Number	Percent of Total
Lebanon	203.0	0.09	2,280	0.10
Lesotho	34.9	0.02	599	0.03
Liberia	71.3	0.03	0	0.00
Libyan Arab Jamahiriya	1,123.7	0.52	11,487	0.52
Lithuania	144.2	0.07	1,692	0.08
Luxembourg	279.1	0.13	3,041	0.14
Macedonia, former Yugoslav Rep. of	68.9	0.03	939	0.04
Madagascar	122.2	0.06	1,472	0.07
Malawi	69.4	0.03	944	0.04
Malaysia	1,486.6	0.68	15,116	0.68
Maldives	8.2	0.004	332	0.01
Mali	93.3	0.04	1,183	0.05
Malta	102.0	0.05	1,270	0.06
Marshall Islands	3.5	0.002	285	0.01
Mauritania	64.4	0.03	894	0.04
Mauritius	101.6	0.05	1,266	0.06
Mexico	3,152.8	1.45	31,778	1.43
Micronesia, Federated States of	5.1	0.002	301	0.01
Moldova	123.2	0.06	1,482	0.07
Mongolia	51.1	0.02	761	0.03
Montenegro, Republic of	27.5	0.01	525	0.02
Morocco	588.2	0.27	6,132	0.28
Mozambique, Republic of	113.6	0.05	1,386	0.06

Table A				
IMF Quotas and Voting Rights				
<i>(as of mid-July 2007)</i>				
	Quota		Votes	
Member Country	Millions of SDRs	Percent of Total	Number	Percent of Total
Myanmar	258.4	0.12	2,834	0.13
Namibia	136.5	0.06	1,615	0.07
Nepal	71.3	0.03	963	0.04
Netherlands	5,162.4	2.38	51,874	2.34
New Zealand	894.6	0.41	9,196	0.42
Nicaragua	130.0	0.06	1,550	0.07
Niger	65.8	0.03	908	0.04
Nigeria	1,753.2	0.81	17,782	0.80
Norway	1,671.7	0.77	16,967	0.77
Oman	194.0	0.09	2,190	0.10
Pakistan	1,033.7	0.48	10,587	0.48
Panama	206.6	0.10	2,316	0.10
Papua New Guinea	131.6	0.06	1,566	0.07
Paraguay	99.9	0.05	1,249	0.06
Peru	638.4	0.29	6,634	0.30
Philippines	879.9	0.40	9,049	0.41
Poland	1,369.0	0.63	13,940	0.63
Portugal	867.4	0.40	8,924	0.40
Qatar	263.8	0.12	2,888	0.13
Romania	1,030.2	0.47	10,552	0.48
Russian Federation	5,945.4	2.74	59,704	2.70
Rwanda	80.1	0.04	1,051	0.05
St. Kitts and Nevis	8.9	0.004	339	0.02
St. Lucia	15.3	0.01	403	0.02
St. Vincent and the Grenadines	8.3	0.004	333	0.02

Table A IMF Quotas and Voting Rights <i>(as of mid-July 2007)</i>				
Member Country	Quota		Votes	
	Millions of SDRs	Percent of Total	Number	Percent of Total
Samoa	11.6	0.01	366	0.02
San Marino	17.0	0.01	420	0.02
São Tomé and Príncipe	7.4	0.003	324	0.01
Saudi Arabia	6,985.5	3.21	70,105	3.17
Senegal	161.8	0.07	1,868	0.08
Serbia, Republic of	467.7	0.22	4,927	0.22
Seychelles	8.8	0.004	338	0.02
Sierra Leone	103.7	0.05	1,287	0.06
Singapore	862.5	0.40	8,875	0.40
Slovak Republic	357.5	0.16	3,825	0.17
Slovenia	231.7	0.11	2,567	0.12
Solomon Islands	10.4	0.005	354	0.02
Somalia	44.2	0.02	692	0.03
South Africa	1,868.5	0.86	18,935	0.85
Spain	3,048.9	1.40	30,739	1.39
Sri Lanka	413.4	0.19	4,384	0.20
Sudan	169.7	0.08	1,947	0.09
Suriname	92.1	0.04	1,171	0.05
Swaziland	50.7	0.02	757	0.03
Sweden	2,395.5	1.10	24,205	1.09
Switzerland	3,458.5	1.59	34,835	1.57
Syrian Arab Republic	293.6	0.14	3,186	0.14
Tajikistan	87.0	0.04	1,120	0.05
Tanzania	198.9	0.09	2,239	0.10
Thailand	1,081.9	0.50	11,069	0.50
Timor-Leste	8.2	0.004	332	0.01

Table A
IMF Quotas and Voting Rights
(as of mid-July 2007)

Member Country	Quota		Votes	
	Millions of SDRs	Percent of Total	Number	Percent of Total
Togo	73.4	0.03	984	0.04
Tonga	6.9	0.003	319	0.01
Trinidad and Tobago	335.6	0.15	3,606	0.16
Tunisia	286.5	0.13	3,115	0.14
Turkey	1,191.3	0.55	12,163	0.55
Turkmenistan	75.2	0.03	1,002	0.05
Uganda	180.5	0.08	2,055	0.09
Ukraine	1,372.0	0.63	13,970	0.63
United Arab Emirates	611.7	0.28	6,367	0.29
United Kingdom	10,738.5	4.94	107,635	4.86
United States	37,149.3	17.09	371,743	16.79
Uruguay	306.5	0.14	3,315	0.15
Uzbekistan	275.6	0.13	3,006	0.14
Vanuatu	17.0	0.01	420	0.02
Venezuela	2,659.1	1.22	26,841	1.21
Vietnam	329.1	0.15	3,541	0.16
Yemen, Republic of	243.5	0.11	2,685	0.12
Zambia	489.1	0.23	5,141	0.23
Zimbabwe	353.4	0.16	0	0.00
TOTALS:	217,314.8	100.0	2,214,651	100.00

Source: IMF Members' Quotas and Voting Power, and IMF Board of Governors, available at <http://www.imf.org/external/np/sec/memdir/members.htm> (as of mid-July 2007).

Notes:

- Voting power varies on certain matters pertaining to the General Department with use of the Fund's resources in that Department.
- Liberia's voting rights and Zimbabwe's voting rights were suspended in 2003 pursuant to Article XXVI 2(b) of the IMF Charter.

Table B
IMF Constituencies and Voting Powers
(as of mid-July 2007)

Seat on Executive Board	Country(ies) Represented	Voting Power of Country	Total Voting Power of Executive Director
*	USA	16.79%	16.79%
*	Japan	6.02%	6.02%
*	Germany	5.88%	5.88%
*	France	4.86%	4.86%
*	UK	4.86%	4.86%
	Austria	0.86%	
	Belarus	0.19%	
	Belgium	2.09%	
	Czech Republic	0.38%	
	Hungary	0.48%	
	Kazakhstan	0.18%	
	Luxembourg	0.14%	
	Slovak Republic	0.17%	
	Slovenia	0.12%	
	Turkey	0.55%	
*	<i>Total</i>		5.15%
	Armenia	0.05%	
	Bosnia & Herzegovina	0.09%	
	Bulgaria	0.30%	
	Croatia	0.18%	
	Cyprus	0.07%	
	Georgia	0.08%	

Table B
IMF Constituencies and Voting Powers
(as of mid-July 2007)

Seat on Executive Board	Country(ies) Represented	Voting Power of Country	Total Voting Power of Executive Director
	Israel	0.43%	
	Macedonia	0.04%	
	Moldova	0.07%	
	Netherlands	2.34%	
	Romania	0.48%	
	Ukraine	0.63%	
*	<i>Total</i>		4.76%
	Costa Rica	0.09%	
	El Salvador	0.09%	
	Guatemala	0.10%	
	Honduras	0.07%	
	Mexico	1.44%	
	Nicaragua	0.07%	
	Spain	1.39%	
	Venezuela	1.21%	
*	<i>Total</i>		4.45%
	Albania	0.03%	
	Greece	0.38%	
	Italy	3.20%	
	Malta	0.06%	
	Portugal	0.40%	
	San Marino	0.02%	

Table B
IMF Constituencies and Voting Powers
(as of mid-July 2007)

Seat on Executive Board	Country(ies) Represented	Voting Power of Country	Total Voting Power of Executive Director
	Timor-Leste	0.01%	
*	<i>Total</i>		4.11%
	Australia	1.47%	
	Kiribati	0.01%	
	Korea	1.33%	
	Marshall Islands	0.01%	
	Micronesia	0.01%	
	Mongolia	0.03%	
	New Zealand	0.42%	
	Palau	0.01%	
	Papau New Guinea	0.07%	
	Philippines	0.41%	
	Samoa	0.02%	
	Seychelles	0.02%	
	Solomon Islands	0.02%	
	Vanuatu	0.02%	
*	<i>Total</i>		3.85%
*	China	3.66%	3.66%
	Antigua & Barbuda	0.02%	
	Bahamas	0.07%	
	Barbados	0.04%	

Table B
IMF Constituencies and Voting Powers
(as of mid-July 2007)

Seat on Executive Board	Country(ies) Represented	Voting Power of Country	Total Voting Power of Executive Director
	Belize	0.02%	
	Canada	2.89%	
	Dominicana	0.01%	
	Grenada	0.02%	
	Ireland	0.39%	
	Jamaica	0.13%	
	St. Kitts & Nevis	0.02%	
	St. Lucia	0.02%	
	St. Vincent & Grenadines	0.02%	
*	<i>Total</i>		3.64%
	Denmark	0.75%	
	Estonia	0.04%	
	Finland	0.58%	
	Iceland	0.06%	
	Latvia	0.07%	
	Lithuania	0.08%	
	Norway	0.77%	
	Sweden	1.09%	
*	<i>Total</i>		3.44%
	Bahrain	0.07%	
	Egypt	0.44%	
	Iraq	0.55%	

Table B
IMF Constituencies and Voting Powers
(as of mid-July 2007)

Seat on Executive Board	Country(ies) Represented	Voting Power of Country	Total Voting Power of Executive Director
	Jordan	0.09%	
	Kuwait	0.64%	
	Lebanon	0.10%	
	Libya	0.52%	
	Maldives	0.01%	
	Oman	0.10%	
	Qatar	0.13%	
	Syria	0.14%	
	United Arab Emirates	0.29%	
	Yemen	0.12%	
*	<i>Total</i>		3.20%
*	Saudi Arabia	3.17%	3.17%
	Brunei Darussalam	0.11%	
	Cambodia	0.05%	
	Fiji	0.04%	
	Indonesia	0.95%	
	Laos	0.04%	
	Malaysia	0.68%	
	Myanmar	0.13%	
	Nepal	0.04%	
	Singapore	0.40%	
	Thailand	0.50%	

Table B
IMF Constituencies and Voting Powers
(as of mid-July 2007)

Seat on Executive Board	Country(ies) Represented	Voting Power of Country	Total Voting Power of Executive Director
	Tonga	0.01%	
	Vietnam	0.16%	
*	<i>Total</i>		3.12%
	Angola	0.14%	
	Botswana	0.04%	
	Burundi	0.05%	
	Eritrea	0.02%	
	Ethiopia	0.07%	
	Gambia	0.03%	
	Kenya	0.13%	
	Lesotho	0.03%	
	Malawi	0.04%	
	Mozambique	0.06%	
	Namibia	0.07%	
	Nigeria	0.80%	
	Sierra Leone	0.06%	
	South Africa	0.86%	
	Sudan	0.09%	
	Swaziland	0.03%	
	Tanzania	0.10%	
	Uganda	0.09%	
	Zambia	0.23%	
*	<i>Total</i>		2.94%

Table B			
IMF Constituencies and Voting Powers			
<i>(as of mid-July 2007)</i>			
Seat on Executive Board	Country(ies) Represented	Voting Power of Country	Total Voting Power of Executive Director
	Azerbaijan	0.08%	
	Kyrgyz Republic	0.05%	
	Poland	0.63%	
	Serbia	0.22%	
	Switzerland	1.57%	
	Tajikistan	0.05%	
	Turkmenistan	0.05%	
	Uzbekistan	0.14%	
*	<i>Total</i>		2.79%
*	Russia	2.70%	2.70%
	Afghanistan	0.08%	
	Algeria	0.58%	
	Ghana	0.18%	
	Iran	0.69%	
	Morocco	0.28%	
	Pakistan	0.48%	
	Tunisia	0.14%	
*	<i>Total</i>		2.42%
	Brazil	1.38%	
	Colombia	0.36%	
	Dominican Republic	0.11%	

Table B IMF Constituencies and Voting Powers <i>(as of mid-July 2007)</i>			
Seat on Executive Board	Country(ies) Represented	Voting Power of Country	Total Voting Power of Executive Director
	Ecuador	0.15%	
	Guyana	0.05%	
	Haiti	0.05%	
	Panama	0.10%	
	Suriname	0.05%	
	Trinidad & Tobago	0.16%	
*	<i>Total</i>		2.42%
	Bangladesh	0.25%	
	Bhutan	0.01%	
	India	1.89%	
	Sri Lanka	0.20%	
*	<i>Total</i>		2.35%
	Argentina	0.97%	
	Bolivia	0.09%	
	Chile	0.40%	
	Paraguay	0.06%	
	Peru	0.30%	
	Uruguay	0.15%	
*	<i>Total</i>		1.96%
	Benin	0.04%	
	Burkina Faso	0.04%	

Table B IMF Constituencies and Voting Powers <i>(as of mid-July 2007)</i>			
Seat on Executive Board	Country(ies) Represented	Voting Power of Country	Total Voting Power of Executive Director
	Cameroon	0.10%	
	Cape Verde	0.02%	
	Central African Republic	0.04%	
	Chad	0.04%	
	Comoros	0.02%	
	Congo, Dem. Republic of	0.25%	
	Congo, Republic of	0.05%	
	Côte d'Ivoire	0.16%	
	Djibouti	0.02%	
	Equatorial Guinea	0.03%	
	Gabon	0.08%	
	Guinea	0.06%	
	Guinea-Bissau	0.02%	
	Madagascar	0.07%	
	Mali	0.05%	
	Mauritania	0.04%	
	Mauritius	0.06%	
	Niger	0.04%	
	Rwanda	0.05%	
	São Tomé and Príncipe	0.01%	
	Senegal	0.08%	
	Togo	0.04%	
*	<i>Total</i>		1.39%

Battles over the GEOs' Policies and Operations

It is time now to evaluate the criticisms that have been leveled at the global economic organizations (GEOs)—these were identified in a “bare-bones” manner in Chapter Two—against the backdrop of reality. By “reality” I mean the way the GEOs actually operate as explained in Chapter Three. One of the reasons I offered at the beginning of this book for saying that we are “losing the Global Development War” is that valid criticisms of the GEOs are being eclipsed by invalid criticisms and that policy decisions about how to address economic problems of a global character are therefore being influenced inappropriately. In order to prevent that from happening, and therefore to stop losing the Global Development War simply through ineptitude and mistake, we need to separate the wheat from the chaff.

I should issue a warning: there is a lot of chaff. Many criticisms are, in my view, off base for a variety of reasons. This chapter and Chapter Five are rather dense because of the need to sift through the chaff and find the wheat—that is, the valid criticisms. Doing so will allow us to consider, in Chapter Six, possible solutions for addressing those valid criticisms.

This chapter examines four of the eight “clusters” of criticisms directed at the GEOs. These first four focus mainly on issues of “policies and operations”. Earlier I explained that these criticisms look to the effects that the GEOs’ operations have “on the ground”—specifically, in terms of such considerations as (1) the national economies of the countries to which the IMF lends, (2) the specific “project areas” that multilateral development bank (MDB) project loans are supposed to improve, (3) the economic and social well-being of persons affected by the trade liberalization rules the WTO enforces, and more generally (4) the ability of nation-states to chart the best course for their people. Later, in Chapter Five, we shall look at the other four “clusters” of criticisms. These are the “character, control, and reach” criticisms that focus mainly on institutional and governance issues. They include (1) the transparency (or opaqueness) of the GEOs, (2) the degree of accountability (if any) that the GEOs have in respect of “outsiders” (and whether such “outsiders” can adequately influence decision making within the GEOs), (3) the faithfulness of the GEOs to their governing charters, and (4) the fairness of their governance structures in general.

I. BAD POLICIES, PROJECTS, AND PERFORMANCE

The first of the “clusters” of criticisms we should examine is the one that occupies perhaps a larger portion of the debate over the GEOs than any other complaints. As I summarized it in Chapter Two, this cluster of criticisms claims that all the GEOs promote a faulty and destructive policy in encouraging *laissez-faire* policies, including especially the ideology of trade liberalization, and that the MDBs and the IMF in particular prescribe policies (consistent with the so-called “Washington Consensus”) that do more harm than good. Moreover, the MDBs (according to some of the critics) promote flawed projects, provide the wrong sort of financing, and are operated by incompetent managers and staff. Let us examine all those points, beginning with that of “free trade”.

A. The Ideology of Trade Liberalization

As explained in Chapter Two, all of the GEOs reflect the ideology of free trade among countries. That is, they all rest on the assumption that increased trade among nations brings economic gain, which in turn can bring other benefits, including political benefits. Central to this ideology is the idea of “World Peace Through World Trade”.

Some critics of the GEOs claim that this foundational ideology is simply wrong, because free trade—or, to be more precise, a liberal regime of trading rules in which tariffs (taxes payable on the importation of goods) are kept low and other non-tariff barriers are prohibited or discouraged—does more economic harm than good to a national society and to the world as a whole. These critics assert that although such free trade can bring some benefits in the way of lower prices, those benefits are illusory in one or more respects.

For one thing, according to this criticism, the lower prices in fact carry a high price tag—the loss of local jobs. Here is the logic this criticism follows: instead of having a local economic base composed of industry that hires people of the community to produce the goods that the consumers in the community need, free trade outsources the production of such goods. The local industries producing the goods go out of business, which means that the worker-consumers who held jobs in those industries no longer have those jobs. If they are able to get other jobs, those substitute jobs often carry lower wages—not to mention lower self-esteem, thus diluting the spiritual fuel that powers any economy. If the displaced workers are not able to find other jobs, they must rely on other sources, including a typically inadequate unemployment insurance system. In either event, the standard of living for the community in general—and for the job-losers in particular—falls, all as a consequence ultimately of free trade.

The criticism does not stop, of course, at the level of the individual or community. It goes on to claim that the benefits of free trade are illusory not only at an individual or community level but also at a national level. If a country subjects itself to the pressures of free trade, it will inevitably lose some industries permanently because there will always be some other countries whose economic circumstances—extremely low wage rates, for example—will make competition impossible. Having lost whole industries to the cold discipline of free trade, a country will find itself robbed of self-sufficiency. And this situation could, over the long term, bring economic distress or even threaten national security if there is a souring of the nation's economic or political relations vis-à-vis the country(ies) to which its former industries have relocated.

In some cases, the benefits of free trade will, according to its critics, be illusory in yet another way as well: the comparative advantage that might prompt an industry to relocate to another country might itself be unfair or illegitimate in some way. For example, a country that permits employers to pay poverty-level wages or to ignore internationally accepted labor and workplace safety standards should not “win” in a competition to provide a home for an industry, and yet free trade allows such a country to do just that. (In this respect, this claim that free trade fosters economic harm approaches another claim that we shall examine below—the claim that free trade encourages a “race to the bottom”.)

Should we accept or reject this assertion that free trade¹ does more economic harm than good to a national society and to the world as a whole? I reject it. Even someone having no training as an economist will surely see, on reflection, that reducing barriers to the trading of goods among countries brings, over the long haul, an aggregate economic benefit to each country involved, because the lower prices that free trade yields for all consumers (including domestic producers who import components) outweigh the costs imposed in the form of some lost jobs.²

¹ As indicated a few paragraphs earlier, I use the short-hand term “free trade” here in lieu of the more precise phrase “a liberalized trade regime”, signifying a set of policies that encourage trading of goods and services across national borders by lowering tariffs and by resisting other protectionist barriers.

² For a more complete, and surely more elegant, explanation of these points, see generally Chapter 2 of Kent Jones, *WHO'S AFRAID OF THE WTO?* (2004). His summation on the proposition that “Trade is Good”, and that a system of treaties and institutions facilitating trade liberalization helps neutralize special-interest political pressures that otherwise would tempt states toward protectionism, appears in the last three pages of that chapter.

I am not alone, of course, in rejecting the assertion that free trade does more economic harm than good overall. Innumerable studies, conducted from various perspectives and published by sources that easily pass the “smell test” of trustworthiness, establish that societies gain economically, in aggregate, from free trade³—and, moreover, that this aggregate economic gain occurs even if a society embraces trade liberalization unilaterally (that is, without insisting on reciprocal liberalization of trade policies by other countries).⁴ These studies confirm the common sense of Adam Smith’s

³ For summaries of such studies, and the conclusions emerging from them, see David Dollar and Aart Kraay, *Trade Growth, and Poverty*, FINANCE & DEVELOPMENT, Sept. 2001, at 16–19 (noting that countries adopting more liberal trade policies have seen increased growth); *Profits Over People*, ECONOMIST, Sept. 29, 2001, in “Globalization and Its Critics: A Survey of Globalization” [hereinafter ECONOMIST SURVEY], at 5 (asserting that globalization “makes some workers worse off while making others (including the poorest ones of all, to begin with) better off” and, in the aggregate, “makes consumers . . . better off as well” so that “given freer trade, both rich-country and poor-country living standards rise”, which “gives governments more to spend on welfare, education and other public services”), available at http://www.economist.com/surveys/displayStory.cfm?Story_id=795995 (last visited June 30, 2007); Kenneth F. Scheve and Matthew J. Slaughter, *A New Deal for Globalization*, 86 FOREIGN AFFAIRS, July–Aug. 2007, at 34, 36 (citing studies showing that in the USA, “trade and investment liberalization over the past decades has added between \$500 billion and \$1 trillion in annual income” and that a successful Doha round of trade negotiations “would generate . . . \$500 billion a year in additional income in the United States”. See also Edward M. Graham, FIGHTING THE WRONG ENEMY: ANTIGLOBAL ACTIVISTS AND MULTINATIONAL ENTERPRISES 82 (2000) (responding to the claim that one effect of free trade is to “export” jobs by arguing “that the empirical evidence does *not* support the contention that outward US investment creates or contributes to low wages or . . . to poor working conditions in developing countries” or to “a net loss of job opportunities in the United States or even [to] the destruction of jobs in high-paying industries”). For a contrary view, asserting that “the empirical evidence on free trade as an engine of efficiency and economic growth” is in fact *not* well established, see Robert H. Wade, *Questions of Fairness: In Search of a Just International Economic Order*, 85 FOREIGN AFFAIRS, Sept.–Oct. 2006, at 136, 140. A recent article makes the valuable distinction between “financial globalization” and “trade liberalization”. Whereas there is a “growing consensus among academic economists that trade liberalization is, by and large, beneficial for both industrial and developing economies”, the article explains that “debate rages among academics and practitioners about the costs and benefits of financial globalization”—that is, the “phenomenon of rising cross-border financial flows”. M. Ayhan Kose, Eswar Prasad, Kenneth Rogoff, and Shang-Jin Wei, *Financial Globalization: Beyond the Blame Game*, 44 FINANCE & DEVELOPMENT, Mar. 2007, at 9.

⁴ See *Who Elected the WTO?*, in ECONOMIST SURVEY, *supra* note 3, at 26, 27 (deriding as “an economic fallacy” the view that lowering trade barriers “is a concession [and] . . . a sacrifice for which you require compensation”). See also Brink Lindsey, *A New Track for U.S. Trade Policy*, CATO INSTITUTE (Center for Trade Policy Studies, Washington, DC), Sept. 11, 1998, at 1 (suggesting that “[f]ree traders need to take protectionist misconceptions and special interests head-on . . . and launch a campaign for the unilateral elimination of specific U.S. trade barriers”), available at <http://www.freetrade.org/pubs/pas/tpa-004es.html> (last visited June 30, 2007).

view of comparative advantage: it is wise for the tailor to make his shirt and buy his shoes, and for the cobbler to make his shoes and buy his shirt.⁵ In this respect, I think a representative of the Center for Economic and Policy Research, writing a few years ago for the Sierra Club magazine, is simply wrong in positing that “trade [was] originally a means to obtain what could not be produced locally.”⁶ Instead, trade is and always was a means of obtaining what is cheaper or better to buy than to make.

Having said all that, I would hasten to make four points that are all more or less related to the “economic harm” argument. These points revolve around (1) the need for “authenticity” in comparative advantage, (2) the difference between aggregate gain and individual loss from free trade, (3) the gap that allegedly exists between free trade’s benefits to rich countries and its benefits to poor countries, and (4) the special challenges free trade poses for very small states.

First, it is important to recognize that free trade yields its benefits in the long term only to the extent that comparative advantage is real and not illusory. Let us use Adam Smith’s cobbler-and-tailor illustration of the common sense underlying free trade. What if the cobbler, in order to get the leather he uses in making shoes, follows a practice of stealing the tailor’s cattle? If that were the case, it should come as little surprise that the cobbler can supply shoes at an attractive price—but we would surely hesitate to say he has a comparative advantage and that the tailor is better off buying his shoes from the cobbler.

Some critics of the current WTO-led model of free trade point to specific circumstances that resemble the example I have contrived above involving the cattle-rustling cobbler. They claim that many of the costs involved in production of agricultural or manufactured goods are not adequately accounted for and paid for by those companies or countries claiming a comparative advantage in such production.⁷ I agree with this claim,

⁵ See Lindsey, *supra* note 4, at 3 (quoting Adam Smith).

⁶ Mark Weisbrot, *Tricks of Free Trade*, SIERRA, Sept.–Oct. 2001, at 64.

⁷ Craig Volland, a friend of mine who works for the Sierra Club, has expressed this point quite clearly:

The appropriate application of comparative advantage is predicated on . . . a good accounting system which we do not have. At this time calculations of advantage do not include externalities (social costs). For example the U.S. employs the world’s most environmentally and socially destructive system of agriculture. If all these costs, such as loss of top soil and mining of aquifers to grow corn in the desert, were incorporated into the cost of product, and if we quit giving out huge subsidies, would we really have a

especially as it applies to environmental costs. I believe that deep and abiding environmental degradation occurs at alarming rates around the world at the hands of persons who, through stealth or improper influence or both, are able to engage in their rapacious behavior without cost or penalty to them.

However, I do not think this reality undercuts the economic rationale for free trade. Trade flows are certainly distorted by such problems of environmental degradation and other externalities that make for unauthentic comparative advantage,⁸ but that does not mean that a liberal trade regime is itself the problem. Instead, action needs to be taken quickly to root out the underlying conditions that permit such problems to exist in the first place. I shall return to this point later in recommending much tougher environmental protections and reforms in national governance.

A second point that is related to, but distinct from, the “economic harm” argument concerns the difference between (1) *aggregate* economic gain for society as a whole⁹ and (2) economic loss for some specific members of the society. This is a point at the heart of the “cluster” of criticisms to be discussed in section II of this chapter, relating to “distributional and social injustice”. As will be explained there, it is obviously true that *some* groups of workers within an economic system—textile workers in the USA, for example—will almost surely suffer more than they will benefit from removing protection from (lower-priced) imports. Why? Because although all consumers (including the textile workers themselves) can benefit from the reduced prices of textile products (because of lower tariff barriers or non-tariff barriers on imported textile products), it is naturally only the textile workers who will lose their jobs as textile workers. However, society can and should deal with that distributional problem *as* a distributional problem, not as a ground for withholding from all consumers the benefits of lower prices. We shall return to this distributional point later.

comparative advantage over many third world farmers which have the advantage of family labor inputs? I think not.

Letter from Craig S. Volland, President, Spectrum Technologies of Kansas City, Kansas, to John W. Head, at 5 (Nov. 29, 2001) (on file with author).

⁸ Indeed, trade flows can also be distorted if a country, having promised to liberalize its trade practices, fails or refuses to do so, as the US government has claimed in respect of the PRC. The US authorities have asserted that the PRC’s implementation of its obligations of WTO membership has been “mixed”.

⁹ In explaining above why I reject the assertion that free trade does more economic harm than good to a national society and to the world *as a whole*, I was careful to include those last three words (*as a whole*), and to refer to the *aggregate* and *overall* gain that a society enjoys from trade with other societies.

A third point that is related to the “economic harm” argument also has a distributional element to it but at the international level rather than at the national and personal levels: some critics of the free trade ideology claim that economic globalization has increased the income gap between the rich countries and the poor countries of the world. I also address this claim in section II of this chapter.

Lastly, some critics assert that whatever benefits might flow from the liberalization of trade rules in and among large countries, such trade liberalization poses a special challenge to very small countries.¹⁰ I agree. It seems unrealistic to expect trade liberalization initiatives to work in a country that has a tiny population or extraordinarily limited natural resources—and numerous countries meet one or both of these criteria, such as Andorra, Barbados, Bhutan, Cape Verde, Comoros, Dominica, Grenada, Maldives, Malta, Micronesia, Palau, St. Lucia, San Marino, Solomon Island, Tonga, and Vanuatu, to name a few. In such places, free trade might bring overall economic harm, not economic benefit. But the reason trade liberalization initiatives are, in my view, unlikely to work in such small countries is part of a bigger reality: as a more general matter, it seems entirely unrealistic to expect such small countries to have economic and political systems that are viable in a world dominated by countries with populations and economies that are larger by a factor of a hundred or even a thousand. To my mind, then, this aspect of the “economic harm” criticism—that free trade fosters economic harm in very small countries—most appropriately calls into question *not* the merits of free trade itself but instead the merits of treating such very small countries as if they were comparable to the rest of the international community, which for the most part comprises countries that are large enough to permit the development of diversified economic systems.

In short, then, I reject the claim that free trade per se is a harmful ideology, and I would urge that Citizen Cynthia and Farmer Feridun, whose circumstances I introduced in Chapter One, also reject that claim—see Box 4.1. Naturally, I also reject the corollary to that claim—that the GEOs should be shut down, or forced to abandon that free-trade ideology, in order to prevent them from operating in ways that reflect such an ideology. What I do *not* reject, however, are certain related claims that have to do with distributional and social injustices that often accompany free trade. Stay tuned until section II for more discussion of those points. Before turning to that discussion, however, we need to examine several other aspects of the “bad policies, projects, and performance” complaint leveled at the GEOs.

¹⁰ See, e.g., Jane Kelsey, *World Trade and Small Nations in the South Pacific Region*, 14 KANSAS JOURNAL OF LAW & PUBLIC POLICY 247, 247–248 (2005).

Box 4.1: Free Trade from Individual Perspectives

Does free trade help or hurt Citizen Cynthia, the fifty-plus-year-old woman in Cincinnati (see section IIB of Chapter One)? Apparently it has done both. Her husband lost his job, after all, because of a plant closing that was widely attributed to his employer's decision to move the company's manufacturing operations overseas, a phenomenon that has led to many plant closings in the "Rust Belt" of the country. She senses that the career opportunities for her children and grandchild(ren) might be limited by similar aspects of "globalization". Indeed, several of the industries that employed her friends and neighbors in earlier years have caught the "outsourcing" bug and contributed to a flood of imports into the USA, including Cincinnati. In those respects, it seems to Cynthia that free trade is a pretty poor policy. But there is another side to the story: the imports that have flooded into the stores where Cynthia shops typically carry considerably lower price tags than the ones made earlier by US companies. Cynthia and all of her neighbors have benefited from those lower prices. (Indeed, they have benefited very greatly, according the preponderance of studies on the subject.) So even if Cynthia is a net "loser" from free trade, most of the people around her are probably net winners because they work in jobs (especially those in service industries) that have not been lost through outsourcing, *and* at the same time, they have benefited from lower-priced imports. (Besides, increased trade might have helped their job prospects because of export expansion.) There is, then, a *distribution* problem at work, and Cynthia feels it keenly. See the discussion of distributional unfairness in subsection IIA, below.

What about Farmer Feridun, in the central Eurasian country of Azbadistan? Whether he favors free trade or not might depend on what products, if any, he can buy now (as imports) that he could not buy before any significant amount of "globalization" came to Azbadistan. Of course, if imported wheat comes to Feridun's village, he and his brothers might find it priced lower than the prices they have to charge for the wheat they grow, because the imported wheat has come from a country that offers its farmers heavy subsidies, thereby driving down world prices. This is a distortion of market prices, and it might make Feridun's neighbors very happy; they might revel in the lower wheat prices. However, the distortion could be very damaging individually to Feridun—and indeed, maybe this explains, in part, why he has had to take on two other jobs. If he had time, and if his country's government had adequate resources, perhaps Feridun could persuade government officials to complain about the foreign subsidies that make the imported wheat so inexpensive.

In both of these cases, the individuals on which we are focusing—Citizen Cynthia and Farmer Feridun—see both benefits and disadvantages to free trade. In their cases, the disadvantages seem to outweigh the benefits, even though most of their neighbors find that the benefits outweigh the disadvantages. Whether the concerns that Cynthia and Feridun have with free trade (because of the disadvantages they suffer) will lead to a government decision to take action, and of what sort, may well depend on (1) the political influence that Cynthia and Feridun have and (2) the effectiveness of efforts that might be taken to offset some of the disadvantages they suffer with some of the (greater) benefits their neighbors enjoy.

B. The “Washington Consensus”, Moral Hazard, the IMF, and the MDBs

1. *The Criticisms*

As explained in Chapter Three, both the IMF and the World Bank (as well as the regional MDBs) engage in “policy-based lending”—that is, they make their loans to member countries conditional upon the governments of those countries accepting certain policy prescriptions. One of the most pervasive of all the criticisms leveled at the IMF and the MDBs is that the economic and financial policies that these institutions prescribe for countries that come to it for financial assistance do little or no good, and often do great harm, to those countries¹¹—and not just to certain segments of the population, such as the poor, within those countries (that is the subject of the “distributional and social injustice” claims to be discussed in section II of this chapter, but also to those countries’ overall economic health.

More specifically, according to this criticism, the economic and financial policies prescribed by the IMF and the MDBs follow a “Washington Consensus”¹² recipe that typically consists of reducing a country’s budget deficit, balance-of-payments deficit, inflation rate, trade barriers, and restrictions on capital flows in and out of the country, while raising interest rates and selling off state assets to private companies. This cocktail of “Washington Consensus” policies, according to the critics, discourages economic growth and drags down new investment. Another related version of the criticism is that some policies insisted on by the IMF in particular are not designed to help the countries’ economies but instead are designed to pressure the countries into honoring debt obligations they have to private-sector lenders. Such policies, the critics say, reflect the willingness of the IMF to serve essentially as a collection agency for major financial institu-

¹¹ For citations to examples in the literature of some criticisms along these lines, see part I of the Appendix to Chapter Two.

¹² The term “Washington Consensus” was used by John Williamson in 1989, in a background paper for a conference on dealing with economic policy in Latin America, as a label for ten types of reforms that Williamson said “almost everyone in Washington thought were needed in Latin America as of that date”: fiscal discipline, reordering public expenditure priorities, tax reform, liberalization of interest rates, a competitive exchange rate, trade liberalization, liberalization of inward foreign direct investment, privatization, deregulation, and property rights. John Williamson, *From Reform Agenda to Damaged Brand Name*, FINANCE & DEVELOPMENT, Sept. 2003, at 10, 10. But like a lion that escaped from its trainer, the term “Washington Consensus” has gone out of control. Williamson himself now calls for a new generation of reforms that will focus on (among other things) institutional reforms and income redistribution. *Id.* at 12–13. He also urges that the term “Washington Consensus” should actually be dropped from the vocabulary, in part because “there is no longer any agreement on the main lines of economic policy between the current U.S. administration and the international financial institutions”. *Id.* at 11–12 (citing recent IMF criticisms of US fiscal policy and the Bush-Cheney administration’s disdain for the expressions of concern about income distribution).

tions that are creditors either of the governments or of private-sector actors in the less developed, debt-ridden countries.

Critics voicing these views have offered as evidence the Asian financial crisis that struck in the latter part of 1997 as well as other crises that have struck in Argentina, Mexico, and Russia. (Dr. Ngaire Woods, of Oxford University, whose book, *The Globalizers*, is referred to later in this chapter, focuses on the latter two countries as well as Africa.) Although the specific circumstances differed, the IMF, often with the World Bank at its side, took action in these cases that some critics found to be inadequate, ill-suited for the circumstances, and ultimately harmful. The Asian financial crisis in particular was a flashpoint for complaints, with numerous commentators charging that the IMF totally mishandled that crisis by prescribing economic and financial policies that needlessly worsened the crisis.

A form of this criticism centers on the notion of “moral hazard”. Moral hazard has been explained this way:

Moral hazard is a term often used when analyzing the effects of insurance. It refers to the idea that the very provision of insurance raises the likelihood of the event being insured against taking place. This is because insurance reduces the incentives for the insured party to take preventive actions. . . . In the financial context, economists and policy makers debate whether the availability of financial support from institutions like the [IMF] leads to moral hazard. That is, does the IMF’s role as a lender to countries in financial crisis actually encourage borrowers and lenders to behave in ways that makes a crisis more likely?¹³

According to many critics, the answer is yes. That is, they claim that the IMF, in providing bailouts in Indonesia, Korea, Russia, and other countries, has created moral hazard in two ways: (1) by signaling to the governments engaging in poor economic management that their bad performance will have no penalty (because the IMF will bail them out); and (2) by signaling to financiers investing in those countries that they can invest without risk (because the IMF will bail them out as well).

In all these respects, then, the IMF and (to a more limited degree) the MDBs are criticized for pressuring borrowing member countries into

¹³ Timothy Lane and Steven Phillips, HAZARD: DOES IMF FINANCING ENCOURAGE IMPRUDENCE BY BORROWERS AND LENDERS? 1 (International Monetary Fund, Economic Issues No. 28, 2002), available at <http://www.imf.org/external/pubs/ft/issues/issues28/index.htm> (last visited June 30, 2007).

taking “bad medicine”—that is, pressuring them into adopting economic and financial policies that are ill-designed and harmful. Are these criticisms persuasive?²

Not to me. Four main reasons lead me to conclude that this “bad medicine” criticism misses the mark. In discussing my reasoning below, I shall focus on the IMF, as it is that institution that typically takes the lead in prescribing economic and financial policies.

2. *Improvement or Deterioration?*

First, experts disagree about the fundamental issue of whether, on balance, countries adopting IMF-prescribed economic and financial policies have shown improvement or deterioration. This is not a matter of a tiny minority of kooks taking one position and the reasonable majority taking the opposite position, as in the case of “Flat-Earth” advocates¹⁴ or some oddball (purported) Christians waiting daily for the Rapture to whisk them away.¹⁵ Instead, opinions by many seemingly smart economists differ widely over IMF policies.

For example, although numerous claims have been made of the disastrous economic repercussions suffered in several Asian countries that adopted IMF-prescribed policies during the financial crisis that gripped the region in the late 1990s, credible counterclaims have been made as well—pointing out, for instance, that currency values and other economic indicators in those countries did in fact stabilize after IMF-prescribed policies were put in place.¹⁶ And more generally (that is, taking into account IMF

¹⁴ For an amusing diversion, see the Web site of the Flat Earth Society, at http://www.alaska.net/~clund/e_djublonskopf/Flatearthsociety.htm.

¹⁵ The following description of the Rapture is provided by *Wikipedia*, probably as authoritative a source as is needed for this purpose:

In conservative Christian eschatology, the rapture is the name given to an event in which all Christians living on earth are simultaneously transported to Heaven to be with Jesus Christ. This is a common belief among, but not limited to, Fundamentalists, Evangelicals, Pentecostals, Baptists, and many independents. While almost all Christian groups believe that those who are saved will have eternal life, the term “rapture” is applied specifically to the event in which all Christians on earth simultaneously ascend to join Christ, and are transformed into immortal bodies. The concept gained popularity in the 1830s, and recently since the 1970s, by proponents of the premillennialist, and in particular the dispensationalist interpretations of scripture. According to these theories, world events indicate that the fulfillment of prophecies of the end times is imminent, and that the rapture could take place at any moment.

¹⁶ For citations to some of the voluminous literature evaluating IMF performance

operations in many countries and regions), serious statistical studies have reached mixed results, suggesting that while there is a correlation between IMF-prescribed policies and either neutral or negative performance in some respects—for example, in terms of efforts to encourage economic growth, raise investment, and reduce inflation—in those countries following the IMF prescription, such policies do in fact seem to be associated with meaningful improvements in such countries' balance of payments. Adding uncertainty to any negative assessment of IMF policy prescriptions is the fact that the overwhelming majority of the statistical studies of such policy prescriptions rely on old data. Even a major recently-published analysis critical of IMF programs¹⁷ “uses data that end in 1990”¹⁸—hardly representative of IMF operations today.

In short, it strikes me as simply absurd to accept the proposition that countries following IMF policy prescriptions have generally suffered economically in terms of the issues those prescriptions were intended to address. No sophisticated empirical consensus exists to support that sweeping proposition.

3. *Causation*

Second, even if it were to be accepted, for the sake of argument, that countries adopting IMF-prescribed policies have in fact taken a nosedive economically, it is illogical to conclude simply from this fact that IMF-prescribed policies caused the nosedive. As one scholar points out, such a conclusion is “particularly troublesome because of the problem of defining the counter-factual; in other words, determining what would have happened in the absence of [an IMF-prescribed] program”.¹⁹ Beyond that, it is unfair to

during the Asian financial crisis, and more generally, see John W. Head, *THE FUTURE OF THE GLOBAL ECONOMIC ORGANIZATIONS: AN EVALUATION OF CRITICISMS LEVELED AT THE IMF, THE MULTILATERAL DEVELOPMENT BANKS, AND THE WTO* 69–74 (2005) [hereinafter Head, *GLOBAL ECONOMIC ORGANIZATIONS*]. The following paragraphs draw liberally from that discussion and from the sources cited therein.

¹⁷ James Raymond Vreeland, *THE IMF AND ECONOMIC DEVELOPMENT* 152 (2003) (finding that “[IMF] programs hurt economic growth and exacerbate income inequality”).

¹⁸ *Id.* at 160. Another recent (2006) article based on the premise that IMF programs “are often unsustainable or unsuccessful in implementation” acknowledges that “the focus of [the] Article is Egypt’s economic reform in the 1990s and its interaction with the IMF”. Alison Elizabeth Chase, *The Politics of Lending and Reform: The International Monetary Fund and the Nation of Egypt*, 42 *STANFORD JOURNAL OF INTERNATIONAL LAW* 193, 193 (2006). The article, very well written and carefully researched, gives valuable historical information but can offer little guidance as to the IMF’s current operations, given the changes the institution has undergone recently.

¹⁹ Gopal Garuda, *Lender of Last Resort: Rethinking IMF Conditionality*, 20 *HARVARD*

conclude that the IMF-prescribed policies themselves were faulty if the country did not implement those policies fully—which is in fact very often the case. And, of course, national economic fortunes and misfortunes have momentum. It would be illogical to blame IMF policies for economic problems that already existed in a country before the IMF intervention began. Moreover, we can gain precious little guidance as to the effects of IMF-prescribed policies by comparing the performance of countries that participate in IMF programs with those that do not, for the simple reason that countries typically do not go to the IMF for help unless they already have serious economic problems. In other words, most countries that participate in IMF programs already face worse economic conditions than those countries that stay away from the IMF.

4. *Moral Hazard?*

A third reason I find the “bad medicine” criticism unpersuasive focuses on the specific issue of “moral hazard” that I described above. I question whether the financial assistance packages arranged by the IMF during the Asian financial crisis would be interpreted either by national governments or by foreign investors as an assurance that they need not be prudent in their policies or their investments. As for *governments*, I agree with the view expressed by the then-Deputy Managing Director of the IMF, Stanley Fischer: “To think that [government] policymakers pursue risky courses of action because they know the IMF safety net will catch them if things go badly is far-fetched. Countries try to avoid going to the [IMF]; policymakers whose countries end up in trouble generally do not survive politically”.²⁰ Fischer’s view on moral hazard for *investors* is also persuasive: “foreign equity investors had lost nearly three-quarters of the value of their equity holdings in some Asian markets . . . [and] the crisis [was also quite] . . . costly for foreign commercial banks”; in short, “[i]nvestors have been hit hard, as they should have been, for lending unwisely”.²¹ Given this, I think the moral hazard complaint is exaggerated, at best, and perhaps even groundless.

INTERNATIONAL LAW REVIEW 36, 38 (1998). See also Graham Bird, *Reforming the IMF: Should the Fund Abandon Conditionality?*, 7 NEW ECONOMY 214, 214 (2000) (noting that “[n]umerous academic studies examining [whether IMF programs] work suggest this is a very difficult question to answer . . . largely because while the outcome is known in countries that adopted Fund programmes, what might have happened if agreement had not been reached cannot be known—the so-called counter-factual problem”).

²⁰ Stanley Fischer, *In Defense of the IMF*, 77 FOREIGN AFFAIRS, July–Aug. 1998, at 103, 106.

²¹ *Id.* For an extensive discussion of the moral hazard question, see generally Lane and Phillips, *supra* note 13. These authors conclude that “moral hazard’s role may have been seriously overstated by some observers”. *Id.* at 13.

5. *Changed Prescriptions*

A fourth reason I largely dismiss the “bad medicine” criticism is that the IMF’s prescriptions, and indeed its overall approach to helping its member countries face economic problems, have been changed rather dramatically in just the last few years. The IMF has responded to its experience in the Asian financial crisis and to the criticisms that its intervention there and in Argentina and Russia have attracted. I would highlight two particular aspects of that IMF response: changes in its approach to crisis management and changes in its conditionality practices.

As for crisis management, the IMF has taken several initiatives that aim to prevent crises from breaking out in the first place. These include:

- (1) creating (in 1999) the Contingent Credit Line—with a successor program now in the pipeline, as described in the “nut-shell” account of the IMF that I offered above in section II of Chapter Three—to recognize a member country’s good economic policies by giving it special protection against the contagion of economic troubles in other countries;
- (2) developing a system for better assessing crisis vulnerabilities in countries that could suffer rapid capital flight, in order to provide for early warning against possible crises; and
- (3) enhancing the usefulness of economic data from and about member countries and the dissemination of these data to the public (recently, for example, special attention has been given to the mechanisms by which the IMF can best provide signals to official or private creditors regarding the strength of a country’s economic policies).

Related to these initiatives aimed specifically at crisis prevention are two other recent changes undertaken by the IMF. Just since 2006 the IMF has started undertaking multilateral consultations—the first one involved the Euro Area, Japan, Saudi Arabia, and the USA—focusing on how global imbalances can be addressed while robust global growth is maintained. More fundamentally still, changes were put in place in 2006 for more intensive economic surveillance at both the country level and the regional level. Part of the new “Medium-Term Strategy” introduced by outgoing Managing Director Rodrigo de Rato, these changes are aimed at doing more to identify and promote effective responses to threats to economic stability. Moreover, a new model, the “Global Economy Model” was developed and launched by the IMF in 2004 to provide a better instrument for evaluating the effectiveness of various national economic and financial policies.

In addition to these initiatives on crisis *prevention*, the IMF has taken several steps recently for the *resolution* of crises that do occur. Several of

these steps respond to the insistence by some critics that principal responsibility for handling crises should remain with the governments and the markets rather than counting on an IMF bailout.²²

The IMF's change in conditionality policies has been equally significant. The IMF's guidelines on conditionality, which had remained unchanged for many years since their adoption in 1979, were changed in 2002 to reflect four principles: (1) the need to enhance the borrowing country's "ownership" of the policy reforms, (2) the need to reduce the number of conditions, (3) the need to tailor the policy programs (and hence the content of the conditionalities) more closely to the borrowing country's circumstances, and (4) the need to improve clarity in the specification of conditions.

An IMF "Staff Statement" appended to the new guidelines on conditionality elaborates on those four principles as follows:

National ownership refers to a willing assumption of responsibility for a program of policies, by country officials who have the responsibility to formulate and carry out those policies [National ownership] is a key determinant of success, and the guidelines aim to promote ownership by ensuring that conditionality is well designed and is formulated through a mutually acceptable process led by the member. . . . [The policies covered by conditionality will pay] due regard to the domestic social and political objectives . . . of the member.

Parsimony means that program-related conditions should be limited to the minimum necessary to achieve the goals of the Fund-supported program or to monitor its implementation and that the choice of conditions should be clearly focused on those goals. . . . [One of those goals involves] fostering sustainable economic growth . . . [which] is linked to the pursuit of higher living standards and a reduction of poverty.

Tailoring of programs implies a recognition that the causes of balance of payments difficulties and the emphasis to be given to various program goals may differ among members. . . . [Although]

²² This increased emphasis on private sector involvement in crisis management began in 1998. See Ross B. Leckow, *The International Monetary Fund and Strengthening the Architecture of the International Monetary System*, 30 LAW & POLICY IN INTERNATIONAL BUSINESS 117, 126–128 (1999). Leckow, the IMF's Deputy General Counsel and a good friend of mine, also describes other initiatives that focus on crisis prevention, including strengthening of IMF surveillance, strengthening of member countries' financial systems, and promoting greater transparency. *Id.* at 118–125.

most Fund-supported programs will include certain common elements [and] . . . must be applied consistently so as to maintain the uniform treatment of members . . . the specification and timing of policy adjustments and the appropriate mix of financing and adjustment will reflect the member's circumstances. . . .

Clarity means that program-related conditions should be transparently distinguished from other elements of the authorities' program both in staff reports and in the member's program documents.²³

The adoption of these changes, like some of the other initiatives referred to above regarding crisis management, demonstrates that the IMF is not—or at least wishes not to be seen as—the immovable object, stubbornly mired in an outmoded ideology, that some critics portray it to be. How well the IMF actually follows through on these initiatives, of course, is what really counts, and it is certainly legitimate to subject the institution to continued scrutiny in this regard. For the moment, however, I believe the IMF should be viewed favorably for updating its approach on both crisis management and conditionality to respond to its critics and recent experience.

6. *Summing Up on IMF Policy Prescriptions*

Taken together, these four reasons prompt me to dismiss the “bad medicine” criticism as it has been leveled at the IMF. I have seen no persuasive evidence, based on recent data, that IMF “medicine”, when actually taken as prescribed, has generally made its borrowing member countries worse off than they would have been without the IMF's involvement—which, it must be remembered, includes infusions of funds as well as policy prescriptions. Moreover, the very large infusions of such funds in Asia and elsewhere cannot, I believe, be fairly seen as having created as much moral hazard as many critics would have us think. And in any event the “bad medicine” criticism is anachronistic because the IMF has changed course in important ways in the past few years.

Does the conclusion I have drawn in this subsection—that I am unconvinced by the claim that the “medicine” prescribed by the IMF is generally or intrinsically or ideologically wrong—mean that I view the “medicine”

²³ IMF GUIDELINES ON CONDITIONALITY as adopted Sept. 25, 2002, available at <http://www.imf.org/external/np/pdr/cond/2002/eng/guid/092302.pdf> (last visited June 30, 2007) (emphasis in original). The changes in the IMF conditionality guidelines was praised by Allan Meltzer, the chairman of the commission that in 2000 voiced strenuous criticisms at the IMF. See Allan H. Meltzer, *The IFIAC Report: Comments on the Critics*, appearing as chapter 4 in *THE IMF AND ITS CRITICS: REFORM OF GLOBAL FINANCIAL ARCHITECTURE*, at 122 (David Vines and Christopher L. Gilbert eds., 2004).

prescribed by the IMF as always right? No. Strong arguments can be made in retrospect that particular forms or amounts of IMF intervention were wrong for the circumstances because they hurt rather than helped a country's economic condition, at least in the short term; and indeed such arguments have been forcefully made in the cases of several specific countries, including Argentina, Mexico, and Russia—Dr. Ngaire Woods writes persuasively, for example, on the last two of these. The conclusion that I have drawn is *not* that IMF prescriptions have always been correct. Instead, my conclusion is that there is no convincing proof for the broad-brush complaint that such prescriptions are intrinsically incorrect because of some fundamental ideological mistake or that they have as a general matter had no beneficial effects on the countries applying them. There is doubtless room for error and room for improvement, but this fact does not, in my view, warrant a wholesale castigation of IMF prescriptions as “bad medicine”, at least as long as opportunities exist for individual errors to be identified and improvements to be made.

C. Bad Projects, Priorities, and Performance by the MDBs

I have concentrated the foregoing discussion almost entirely on IMF policy prescriptions. Insofar as the World Bank and the regional MDBs also press their borrowing member countries to adopt nationwide economic and financial policies, the same analysis applies. But, of course, the MDBs, as explained in Chapter Three, place most of their emphasis on project lending, not policy-based lending. As a practical matter, this exposes the MDBs to an extremely broad array of complaints that all fall under the general rubric of “bad projects, priorities, and performance”. As summarized above in Chapter Two, these complaints include the following:²⁴

- *Flawed policies and projects.* “The MDBs promote a flawed *laissez-faire* economic model, conceive of ‘development’ too narrowly, and support flawed projects that do not help the borrowing member countries”.
- *Wrong form of financial assistance.* “MDB lending operations are anachronistic now that effective international capital markets exist; so MDB financing (if continued at all) should take the form of grants, not loans”.
- *Weaknesses in staffing and management.* “The MDBs are poorly managed, in part because (i) staff members are not properly accountable for their performance and (ii) staff hiring and promotion rest on inappropriate criteria”.

²⁴ The more specific criticisms focusing on environmental and human rights concerns are covered separately, in the next section of this chapter.

1. *Bad MDB Policies and Projects?*

Let us start with the first of these. In its usual form, this “flawed policies and projects” criticism asserts that the MDBs are based on a flawed economic model—that of *laissez-faire*, free-market policies—and they force borrowing member countries (sometimes in a “cookie-cutter” manner) to undertake development projects that hew to that economic model instead of allowing those countries to develop their economies through pragmatic, tailored (even protectionist) policies until those countries can get on their feet economically. The MDBs’ alleged insistence on this *laissez-faire* model (which is wedded to the “Washington Consensus” that I referred to earlier in this chapter) is said to reflect the fact that the MDBs conceive of “development” as a narrow process of economic restructuring to stimulate economic growth. Critics assert that in the MDBs’ headlong rush to create such economic growth, they often support flawed projects that do not provide long-term economic improvement in the lives of those people who are allegedly the intended beneficiaries of the projects. Indeed, it is claimed that some of the projects (for example, those to expand coffee production²⁵) have led to disruption of world markets and economic distress.

In addition, critics complain that some of the projects and policies supported by the MDBs promote privatization in unsophisticated economies that do not yet have an adequate institutional and regulatory framework in place. As a result, it is asserted, the process and results of privatization are terrible; the scoundrels waltz right into the economy, to everyone’s detriment but their own. All in all, according to many critics, this allegedly inappropriate and unthinking adoption of, and insistence on, a Western rich-country economic model, without due attention to local conditions, has brought further impoverishment to less developed countries.

Are these valid points? For the most part, no. Except for the point about privatization, I find the “flawed projects and policies” criticism in general to be unpersuasive. Let me explain why.

First, it rests on some incorrect factual assumptions about public economics. To the extent that the criticism attacks economic liberalism—that is, a general reliance on effective market mechanisms to provide for efficient allocation of resources, rather than on central planning under which government officials direct the details of an economic activity—I think the criticism fails miserably. If we learn anything from the last half-century, we

²⁵ Michael Massing, *From Protest to Program*, THE AMERICAN PROSPECT, Summer 2001, at 5 (stating that “[o]ne reason there’s a glut [in coffee production] is that the World Bank has for years been pushing third-world countries to grow cash crops like coffee to boost their export earnings”).

should learn that a liberal, relatively open and effective market system of economic activity works vastly better than a system of central planning.

I would hasten, however, to emphasize a point that is implicit in my reference to an “effective” market system: markets must be regulated, and it is the failure to install adequate regulations (on bank lending, on securities trading, on consumer safety, on corporate governance, etc.) that have created havoc in some countries undertaking the transformation from central planning to market-based economies.²⁶ Indeed, the dangers of inappropriate deregulation are evident not only in economies in transition but also in economically developed countries such as the USA.²⁷

In short, the market-based model that the MDBs (and the IMF) espouse is not a flawed economic model. It is altogether appropriate, in my view, that the MDBs require governments to adopt that model if they wish to use the resources of the international community in the course of developing the national economies for which those governments are responsible.

Second, this “flawed policies and projects” criticism rests on unprovable factual assumptions about the long-term economic effects of MDB-supported projects. To claim, as some critics do, that the World Bank has brought no improvement to Africa in three or four decades of work there is to engage in preposterous rhetoric, because it is impossible to prove or disprove the claim. There is no “counterfactual”, or “control set”—no Africa without World Bank involvement—against which to compare the results.²⁸ It *is* possible, however, to evaluate how well individual MDB-

²⁶ I worked in several former Soviet republics in the early 1990s, just following the collapse of the USSR. I met many officials in central banks and finance ministries who assumed that replacing a centrally planned economy with a market-based economy required that economic regulations should simply disappear in favor of a no-holds-barred *laissez-faire* system. I explained numerous times that this was not true.

²⁷ For an account explaining how the US savings-and-loan crisis of the late 1980s and early 1990s resulted in part from overly relaxed regulation of the financial services industry, see William A. Lovett, BANKING AND FINANCIAL INSTITUTIONS LAW IN A NUTSHELL 273–278, 284 (2001). Former World Bank chief economist Joseph Stiglitz has made a similar point about deregulation more broadly in the 1990s in America: “It is no coincidence that three of the sectors involved in today’s economic problems—finance, telecommunications, and electricity trading—were all subject to deregulation”. Joseph Stiglitz, *The Roaring Nineties*, THE ATLANTIC MONTHLY, Oct. 2002, at 81–82.

²⁸ A report of the US General Accounting Office on the performance of the World Bank expresses the same point this way: “It is difficult to demonstrate the impact of Bank projects on countries’ overall development. . . . [I]t is not reasonable to use country macroeconomic indicators alone to judge the effectiveness of the Bank, especially since one can only speculate about the course of a country’s development in the absence of Bank assistance”. General Accounting Office, *World Bank: U.S. Interests Supported, but Oversight Needed*

financed projects have met the goals identified at the time of their planning and approval. While it is doubtless true that some MDB-financed projects have failed to meet their stated goals (the World Bank has said as much and provided documentary support), those failures seem clearly to have been outweighed, certainly in recent years, by successes as judged by both external and internal evaluators.²⁹ More importantly, neither of these assertions (that some projects have failed and that some have succeeded) speaks to either (1) the question of causation—was it because of MDB influence that the project succeeded or failed, or was the borrower largely unmoved by the MDB’s involvement in project design or policy guidance?³⁰—or (2) the long-term overall economic effects of MDB operations, either on the countries in which those operations were conducted or on the global economy more generally.

Moreover, it should be borne in mind that many of the projects financed by the MDBs would (at least in the last couple of decades, after the development of the global financial markets) have been carried out with or without MDB support. That is, even if MDB financing had *not* been available, many of the roads, ports, power plants, and other infrastructure projects would still have been undertaken with commercial bank financing. Such commercial bank financing, however, would have come at a higher cost to the borrowing countries—because the banks would not have been able to rely on the expertise and the preferred creditor status of the MDBs, and in some cases (as Dr. Ngairé Woods has phrased it) the MDBs “exist in large part to go where angels fear to tread”.³¹ Moreover, the commercial

to Help Ensure Improved Performance, GAO/NSIAD-96-212, at 38 (Sept. 1996), available at <http://www.gao.gov/archive/1996/ns96212.pdf> (last visited June 30, 2007).

²⁹ For details on evaluations, both positive and negative, of projects financed by the World Bank and other MDBs, see Head, *GLOBAL ECONOMIC ORGANIZATIONS*, *supra* note 16, at 129–133.

³⁰ In this respect, it is worth observing that many governments follow their own economic, financial, or social policies notwithstanding MDB involvement. For a discussion of this point in the context of Mexico and Argentina in the 1990s, see Cecilia Zanette, *THE INFLUENCE OF THE WORLD BANK ON NATIONAL HOUSING AND URBAN POLICIES* (2004). The book concludes by noting that “[i]nstead of the all-powerful image of the World Bank often portrayed by critics, this analysis identifies clear limits to the ability of the Bank to influence national sector policies”; and indeed, in at least one of those countries the country’s “national authorities [were able] to affect the content of operations financed by the World Bank to support their own priorities”—underscoring the fact that “the policies being implemented [by a borrowing government] are ultimately the responsibility of national leaders, a fact that is often minimized when discussing the influence of the World Bank on developing countries”. *Id.* at 291.

³¹ Ngairé Woods, *THE GLOBALIZERS: THE IMF, THE WORLD BANK, AND THEIR BORROWERS* 9 (2006).

bank financing would almost surely not have taken into account environmental and social considerations to the same degree as the MDBs do for such projects (to be discussed below). From that perspective, it seems highly likely that MDB involvement has worked to the benefit, not the detriment, of the borrowing member countries and their populations.

Although I largely dismiss this “flawed policies and projects” criticism, I draw from it two vital points. First, the application of a market-based economic model to societies that lack the experience or legal framework necessary for such a model to succeed is at least a disservice and perhaps a recipe for disaster. For example, requiring a country to force its banks to adhere immediately to the Basle guidelines on capital adequacy³² could bring economic meltdown if the country does not have in place effective rules and procedures for handling insolvent banks. Accordingly, the MDBs must (1) gauge carefully the capacity of a borrowing member’s economy to undertake reform, (2) design conditionalities accordingly, and (3) provide or help arrange for the technical assistance needed to help the country build the legal framework necessary for a market-based economy to prosper.³³

Second, the fact that some MDB-financed projects have failed to bring the intended benefits, or have brought unintended negative consequences, underscores the importance of careful project appraisal and design. The last fifteen years have seen dramatic changes in the MDBs’ use of environmental impact assessment and social impact assessment (a point I shall return to below), and even though these efforts still need further attention, especially to ensure that the social and environmental safeguards built into project designs are in fact implemented, the fact remains that the MDBs are now giving much greater attention to these aspects of project design

³² The Basle guidelines on capital adequacy requirements were first established by the Basle Committee on Banking Supervision (a committee of banking supervisory authorities working under the auspices of the Bank for International Settlements) in the late 1980s to assist governments in establishing regulations that would prevent financial institutions from operating in a manner that placed depositors’ assets at undue risk. For an explanation of those capital adequacy guidelines, and related work of the Basle Committee, see Robert Lee Ramsey & John W. Head, PREVENTING FINANCIAL CHAOS: AN INTERNATIONAL GUIDE TO LEGAL RULES AND OPERATIONAL PROCEDURES FOR HANDLING INSOLVENT BANKS 10, 163–168 (2000); John W. Head, *Lessons from the Asian Financial Crisis: The Role of the IMF and the United States*, KANSAS JOURNAL OF LAW & PUBLIC POLICY 70, 80, 95 n.83 (1998).

³³ The World Bank expressly acknowledged the importance of these factors in the evaluation it made of its own work in “transition countries” such as Russia: “effectiveness was limited by an initial underestimation of the need to focus on . . . good governance [and by the fact that such countries often lacked] a supporting legal and institutional framework” to adopt and implement many of the policies. *Economies in Transition: An OED Evaluation of World Bank Assistance*, at x (2004).

and implementation. Moreover, a broader effort in this direction—beyond considerations of social and environmental safeguards—is also under way in the form of the Managing for Development Results (MfDR) initiative undertaken by all the MDBs collectively. MfDR practices aim to bring over-all improvements in the design, implementation, and evaluation of MDB strategies and operations.³⁴ This too is new.

2. *Wrong Form of Assistance?*

What about the related criticism—still under the overall rubric of “bad projects, priorities, and performance”—that the MDBs are providing the wrong form of financial assistance? According to this criticism, which appeared in the so-called Meltzer Report issued a few years ago³⁵ and which was sounded again by two former AsDB vice presidents in early 2007,³⁶ the MDBs should dramatically reduce, or stop entirely, their practice of making loans. MDB lending is, according to this criticism, anachronistic: when the MDBs were established, there were no global financial markets and institutions available to provide the financing necessary to facilitate the large public works projects needed to rebuild Europe (in the case of the

³⁴ See Multilateral Development Bank Working Group on Managing for Development Results, *The Multilateral Development Bank Common Performance Assessment System (COMPASS) 2005 Report* (2006). My close friend, Bruce Purdue, chairs the Working Group that issued this report on behalf of the World Bank, the Asian Development Bank (AsDB), the the African Development Bank (AfDB), the Inter-American Development Bank (IADB), and the European Bank for Reconstruction and Development (EBRD).

³⁵ See JOINT ECONOMIC COMMITTEE, REPORT OF THE INTERNATIONAL FINANCIAL INSTITUTIONS ADVISORY COMMISSION 9 (Mar. 2000) [hereinafter MELTZER REPORT], available at <http://www.house.gov/jec/imf/meltzer.pdf> (last visited June 30, 2007). This report, named after its chairman Allan Meltzer, is obviously worthy of some attention. In most respects, however, it strikes me as a document riddled with inaccuracies, sweeping generalizations, unsubstantiated suggestions, and not a little ideological hogwash suitable for cute sound bites but of no lasting significance. Dissenting views expressed by four commission members—including most notably Fred Bergsten, whose expert insight has contributed to intelligent assessment of international institutions and relations for several decades—impress me as far more credible and persuasive. See MELTZER REPORT, *supra*, at 111–18. See also C. Fred Bergsten, *The Empire Strikes Back*, THE INTERNATIONAL ECONOMY, May 2000, at 10–13, 52 (criticizing the Meltzer Report on grounds that it “unfairly maligns two highly successful international institutions”).

³⁶ See Geert van der Linden and William R. Thomson, *Development Banks' Principal Role Should No Longer Be Providing Capital*, FINANCIAL TIMES (ASIA EDITION), Mar. 9, 2007, at 10 (letter to the editor). Other, somewhat different, calls for changes in the modalities of AsDB operations emerged from a recent report by an “Eminent Persons Group” engaged by the AsDB. That Group suggested the AsDB shift its emphasis more toward that of a “knowledge bank” as the demand for purely banking activities diminishes. See Victor Mallet, *ADB Told to Change Lending Policy or Risk Irrelevance*, FINANCIAL TIMES, Apr. 2, 2007, at 6.

IBRD) and (for all the MDBs) to bring economic development to the underdeveloped countries. Now the situation is different. The global financial system is very mature. Hence (according to this criticism), MDB loans—and therefore the public borrowings and public contributions on which those MDB loans depend—are no longer necessary. Observers following this line of reasoning assert that if MDB financing is to continue at all, it should continue (at least predominantly) in the form of grants, so as to assist those countries and those projects that are truly needed and viable from a long-term development perspective but for which commercial financing is unavailable on reasonable terms. In short, they say that if the MDBs are serious about poverty alleviation, they should be giving grants rather than making loans.

I largely reject this line of reasoning. While it is true that the global financial markets have changed dramatically in the past half-century and that the MDBs no longer fill as large a gap as the one that existed in the 1940s or in the 1960s, MDBs still have an important role to play as lenders, in addition to other roles that they should play. For one thing, many of the projects that MDBs help finance still fall into the category of public works projects on which commercial financial institutions typically would not wish to be the lead lender.³⁷ With an MDB serving as the lead lender, however, commercial lenders sometimes will participate. It is no accident that a substantial portion of AsDB and World Bank financing, for example, is provided in conjunction with co-financing by commercial lenders.³⁸

There are other reasons why loans, not grants, should continue to make up the bulk of financial assistance provided by MDBs. One of the simple reasons is that the MDBs rely in large part on “reflows”—repayments of

³⁷ For example, nearly 20 percent of AsDB lending in recent years has gone to finance “social infrastructure” projects, supporting such things as education, waste management, urban development, water supply, and reproductive health. The corresponding figure for the IADB is even higher. Although long-term economic rates of return on such projects (especially education and health projects) tend to be quite high, the short-term financial (revenue-producing) returns that are most attractive to commercial lenders often are low.

³⁸ According to its annual report, commercial co-financing for AsDB-supported projects totaled US\$1.5 billion in 2006. THE ASIAN DEVELOPMENT BANK ANNUAL REPORT 2006, at 39, *available at* http://www.adb.org/Documents/Reports/Annual_Report/2006/ADB-AR2006-Financial-Operations.pdf (last visited June 30, 2007). Over the three decades from 1970 through 2001, a total of 580 AsDB-supported loan projects and programs received such commercial cofinancing, amounting in aggregate to US\$9.2 billion. Commercial co-financing for World Bank-supported projects totaled US\$4.9 billion in fiscal year 2006 alone. THE WORLD BANK ANNUAL REPORT 2006, at 64, *available at* <http://siteresources.worldbank.org/INTANNREP2K6/Resources/2838485-1158333614345/AR06Section3SFYA.pdf> (last visited June 30, 2007).

loans—for their resources. Beyond that, in many of the least economically developed borrowing countries, the experience of government officials in handling national financial affairs is so skimpy that the discipline involved in taking a loan (as opposed to a grant) is better developed by working with an MDB (which typically provides extensive counseling and training in handling such affairs) than by working with a commercial lender. Besides, it is that very category of countries—least economically developed—that will be eligible for the “soft-loan” terms provided from the International Development Agency (IDA) and the regional MDBs, as explained above in Chapter Three.

Having said all this, I agree wholeheartedly that the level of *grant* financing made available by the MDBs should be increased, along with the “soft loan” resources through regular replenishment negotiations among the wealthy countries.³⁹ Such grant financing can help MDB member countries in a multitude of ways that contribute to their development. For example, AsDB technical assistance grants pay for training of government officials, development of long-range development plans, preparation of projects, technology upgrades, consulting services for project management, seminars and conferences on economic and financial issues, improvement of national accounting and auditing standards, research in economics and trade, and so forth. Some recent studies have concluded that these forms of technical assistance, aimed at capacity-building in less developed countries, can make the difference between effective and ineffective use of development loans.⁴⁰

3. *MDB Management and Staffing*

Let us turn to the third specific criticism falling within the rubric of “bad projects, priorities, and performance”—the complaint that the MDBs are operated by incompetent managers and staff. Perhaps a less abrasive way to express this criticism is to say that the MDBs are run by persons who have numerous inadequacies, so that even if other deficiencies in the MDBs could be remedied, their operations would still be found wanting.

³⁹ A working group within the American Bar Association’s Section of International Law and Practice expressed this same view (as have many other observers), concluding in a 1994 report that the USA “should consider increasing the level of its financial contributions to the International Development Association (IDA), the entity of the World Bank Group that provides assistance to the poorest countries of the world”.

⁴⁰ See Steven Radelet, Michael Clemens, and Rikhil Bhavnani, *Aid and Growth*, 42 FINANCE & DEVELOPMENT, Sept. 2005, at 16, 17 (asserting that countries with stronger institutions can absorb and use aid more effectively and therefore urging “efforts to strengthen institutions and build human capital”).

The perceived inadequacies take different forms. For one thing, it is claimed that staff appointments to and promotions within the MDBs—and even the selections of top managers—are sometimes based on the wrong grounds. Too much emphasis, it is said, is placed on nationality, so that a candidate from an “underrepresented” country might be appointed to a staff position (or promoted to a higher one) despite being otherwise poorly qualified for the job, or in any event substantially less qualified overall than another candidate for the position. In terms of promotions, it is claimed that too much emphasis is placed on the volume, rather than the quality, of lending activity generated by the person; in other words, the MDBs have an “approval culture” that gives incentives to lend for lending’s sake.⁴¹

A second form of alleged staff inadequacy is policy anachronism. According to critics focusing on this point, some staff members who have served in the MDBs for over a decade or two are unable or unwilling to appreciate how the theory and practice of economic development has changed in recent years, and their seniority can give them great influence in formulating and implementing MDB policy. A third form of perceived staff inadequacy stems from a lack of internal accountability because of a division in responsibilities and a regular shifting of staff from one type of job to another within the organization.

I am convinced from my own experience and network of acquaintances in the MDBs that those institutions are staffed by people who are, by and large, deeply dedicated to their work. Many of them have experience and expertise in dealing with extraordinarily complex problems—endemic diseases, institutional weaknesses, cultural incongruities, scarce natural resources, dysfunctional markets, currency fluctuations, mangrove protection, perishable commodities, wind propulsion, coral reef fragility, airport runway design, government corruption, bank insolvencies, cross-default clauses—all in the context of a multicultural and multilingual workplace. Most of them realize the importance of their jobs, the uniqueness of the contribution they can make (or injury they can cause), and the moral duty they have to use their best efforts. I have a deep respect and fond admiration for them as a class of international civil servants, and of course for some of them whom I know personally.

⁴¹ For the complaint that the MDBs have an “approval culture” aimed at achieving yearly lending targets”, and that this gives “[i]ncentives to lend for lending’s sake . . .”, see MELTZER REPORT, *supra* note 35, at 75. See also Korinna Horta, *Rhetoric and Reality: Human Rights and the World Bank*, 15 HARVARD HUMAN RIGHTS JOURNAL 227, 241 (2002) (ascribing the term “approval culture” to former World Bank Vice President Willi Wapenhans).

However, I believe the system of MDB staffing and management suffers from several weaknesses that have been identified by critics: excessive influence ((overweighting)) of nationality as a factor in staff appointments and promotion; inordinate emphasis on loan volume, rather than on loan quality, in promotions and other rewards; “policy anachronism” on the part of some senior staff members who do not give adequate attention to environmental and social dimensions of development; and lack of internal accountability.

Beyond the weaknesses noted above is another very important one—inadequacy of staff resources. Although the staff resources of MDBs have been increased in recent years to work on environmental issues, some additional staffing in that area will be needed if (as I suggest later in this chapter and Chapter Six) the MDBs are to be given an expanded role in these areas. More broadly, however, MDB staff resources need to be dramatically increased in order to handle the numerous other tasks that their governing boards have laid on them, including (in addition to environmental concerns) such topics as anti-corruption, project benefit monitoring and evaluation, cooperation with non-governmental organizations (NGOs) and other aid agencies, gender and development, governance, indigenous peoples, inspection, poverty reduction, rehabilitation assistance, resettlement, and social development.

In this more general regard, I consider the staff resources of the World Bank and AsDB—the two MDBs with which I am more familiar—to be woefully inadequate now. Some senior staff members in the AsDB have pointedly criticized the “policy proliferation” that has occurred in that institution (at the initiative of the Board of Directors, following instructions from their national authorities) without an adequate increase in staff resources to handle the increased responsibilities. Consistent with this, in late 2003, the AsDB staff council complained formally to the AsDB Board of Directors about a “severe work overload” among rank-and-file staff members and blamed that situation for low morale among staff.⁴²

I offer in Chapter Six some recommendations for redressing these various weaknesses. Those recommendations revolve around these key points: an increase in staff resources; policy changes regarding staff appointments and promotions (some of which are already on track in the World Bank); mechanisms for enhanced staff and management accountability (some of which are also under way in the World Bank and the AsDB); and greatly improved and expanded cooperation with other agencies and NGOs, so

⁴² Shawn Donnan and Roel Landingin, *Asian Development Bank Moves to Address Low Morale of Staff*, FINANCIAL TIMES, Nov. 25, 2003, at 4.

that the MDBs serve as clearinghouses and coordinators for a network of subject matter specialists.

II. DISTRIBUTIONAL AND SOCIAL INJUSTICE

We turn now to a second “cluster” of criticisms leveled at the policies and operations of the GEOs. These criticisms all circulate around the issue of distributional and social justice—or, more precisely, the distributional and social *injustice* that these institutions allegedly create and facilitate. As summarized in Chapter Two, the complaint runs along these lines: “Even if the policies and projects that emerge from the GEOs’ operations do in fact bring *aggregate* benefits to national and regional economies, those benefits are distributed in ways that are deeply inequitable and that ignore key social aspects of development. Expressed differently, the GEOs’ operations create too many ‘losers’ for us to accept”.

Hence, this issue pertains to all of the GEOs, but in different ways. In the context of the WTO, what is primarily at issue is the distributional implications of trade liberalization. In the context of the IMF, what is principally at issue is the distributional aspects of the economic and financial policy prescriptions imposed by the IMF on its borrowing member countries, including the burden of those policies on poor people. In the context of the World Bank and the regional MDBs, what is mainly at issue is how the design and implementation of development projects reflect (or ignore) social values and human rights, especially those of the most vulnerable segments of society. Let us examine these three aspects separately, starting with the WTO. (The following discussion omits reference to the social value of environmental protection; that matter is so important as to warrant separate discussion in section III of this chapter.)

A. Winners and Losers from WTO-Led Free Trade

Many critics of the WTO claim that even if free trade⁴³ can be shown to bring aggregate economic benefits that exceed its costs, those benefits are not fairly distributed, either within a national economic system or among nations; and the WTO, as the institutional vehicle for free trade, permits this unfairness to occur and to persist. At work in this criticism is a concern for social justice. It is regarded as inappropriate that free trade results in some absolute losers—most obviously, those persons who lose their jobs and have no realistic expectation to be rehired in other jobs with

⁴³ As in some earlier portions of this book, I use the short-hand term “free trade” here in lieu of the more precise phrase “a liberalized trade regime”, signifying policies that encourage trading of goods and services across national borders by lowering tariffs and by resisting other protectionist practices.

economic or social returns equivalent to those of the jobs they have lost. Faced with this prospect of some persons who will suffer such losses as a result of free trade, critics who press this “distributional injustice” complaint would opt to stifle free trade even if free trade would bring overall economic benefit to the society in aggregate. Expressed differently, since free trade makes some people lose, the prospect that it will make more people win than lose is not good enough.

The social justice concern at work in this criticism applies not only within a single national economic system but also to the world as a whole. In that wider context, the concern is that while free trade in general—and in particular free trade as facilitated by the WTO—can help some countries improve their economic circumstances, some other countries will either not “win” at all from free trade, or at least will not “win” as much as other countries. The great divide usually at issue in the criticism at this global level, of course, is the one that separates the economically developed countries from the less developed countries (LDCs, or “Third World” countries). What Professor Raj Bhala has called the “anti-Third World claim”, for example, asserts that international trade law as embodied in the General Agreement on Tariffs and Trade (GATT) and the WTO is adverse to the interests of LDCs.⁴⁴ A variant of this complaint is that even if the rules are not unfair per se, the LDCs suffer because the economically developed countries are not playing by the rules.

1. *Focusing on the National Level*

It should come as no surprise that although an economic system as a whole benefits from free trade, not every individual benefits from free trade. There are both winners and losers. Perhaps the most obvious losers are those whose jobs disappear because they were producing goods or services that, due to a comparative advantage enjoyed by another country, are cheaper to import than to make domestically. (See Box 4.1, earlier in this chapter, for the perspectives that our hypothetical Citizen Cynthia and Farmer Feridun might have in this regard.)

Viewing the “winners-and-losers” equation emerging from globalization generally (that is, not focusing specifically on trade liberalization), one economics expert describes the situation in this way:

⁴⁴ Raj Bhala, *TRADE, DEVELOPMENT, AND SOCIAL JUSTICE* 3 (2003) [hereinafter Bhala-2003]. Professor Bhala, who is a good friend and colleague of mine at the University of Kansas, has explained that he uses the term “Third World” “*not* in any pejorative sense, but rather in an inclusive manner”. *Id.* at xxix. I take the same approach. Moreover, my reference to “less developed” in the term “less developed country” (or in the acronym “LDC”) is only to economic development and not to cultural or social or political development. Indeed, I regard many LDCs, especially in Asia, to be considerably more mature, sophisticated, and “developed” in many respects than my own homeland.

The reality is that globalization makes the world a richer place, but the wealth it creates goes disproportionately to two sorts of people. On one side are those who benefit from vastly improved access to technology and capital—which is to say, workers in developing countries. On the other are those in advanced countries who, directly or indirectly, have technology and capital to sell—which means the rich and the highly educated. Largely left out of the party, possibly even made worse off, are those who fall into neither category.⁴⁵

When the type of globalization at issue is trade liberalization, of course, another category of persons, so wide as to encompass nearly everyone in an economically advanced society such as the USA or Europe, also benefits—consumers. They enjoy lower prices charged on imported goods that trade liberalization welcomes into the economy. However, these lower prices on imported goods will be only faint consolation to someone who loses his or her job as a result of trade liberalization.

What, if anything, should be done about such persons—that is, those who are the losers from trade liberalization? Many people agree that the winners should share some of their winnings with the losers. One authority on international economic matters writes:

[G]lobalization brings substantial net benefits to the American economy, . . . [but leaders] must acknowledge that globalization causes job and income losses in certain sectors, which exact significant psychological tolls. The government, therefore, has a responsibility to channel help from the winners to the losers, for humanitarian and equity reasons as well as to maintain political support for continued globalization efforts.⁴⁶

To fulfill that obligation, the same author continues, a country “must adopt stronger safety nets, including more generous unemployment insur-

⁴⁵ Paul Krugman, *Reckonings: The Magic Mountain*, NEW YORK TIMES, Jan. 23, 2000, at 15, quoted and cited in Ewell E. Murphy, Jr., *The Lessons of Seattle: Learning from the Failed Third WTO Ministerial Conference*, 13 TRANSNATIONAL LAWYER 273, 286–287 (2000). Recent studies have emphasized that at least in the USA, globalization has benefited “a thriving elite” consisting of the very top crust of highly educated persons (3.4 percent of US society by one calculation) but has brought a decline in average earnings for all those other workers who do not have professional degrees and doctorates. See Scheve and Slaughter, *supra* note 3, at 37. See also Rawi Abdelal and Adam Segal, *Has Globalization Passed Its Peak?*, 86 FOREIGN AFFAIRS, Jan.–Feb. 2007, at 103, 108 (lamenting that “uneven distribution of globalization’s benefits” has led to increasing popular dissatisfaction with globalization).

⁴⁶ C. Fred Bergsten, *America’s Two-Front Economic Conflict*, 80 FOREIGN AFFAIRS, Mar.–Apr. 2001, at 16, 26. For several other expressions of a similar nature, see Box 6.4, in Chapter 6.

ance eligibility and compensation levels” and other initiatives, and it must “provide better education and training programs”.⁴⁷ We have tried that in the USA, with the Trade Adjustment Assistance (TAA) program that has been in existence for many years. The TAA program provides three types of financial assistance—to pay retraining expenses, job-hunting expenses, and relocation expenses—for workers who, because of import competition, lose their jobs. A similar but more targeted program of financial assistance applies to workers who lose their jobs because of the North American Free Trade Agreement (NAFTA).

Unfortunately, the TAA program has never been successful. It has suffered through the years from inadequate congressional funding, which itself reflects a lack of political support over the long run. Short bursts of attention and outrage do occur over the TAA program, such as was seen in March 2007, when congressional hearings brought out testimony about “nightmarish administrative complexity”, a failure to allocate funds, serious understaffing, and unavailability of training benefits supposedly provided under the TAA program.⁴⁸ Obviously more effective initiatives are needed. I offer some suggestions in this regard in Chapter Six.

2. *Focusing on the Global Level*

As explained above, this criticism applies not only at a national level (which is the topic of the preceding few paragraphs) but also at the global level. That is, it claims that even if free trade can be shown to bring aggregate economic benefits that exceed its costs, those benefits are not fairly distributed among nations. For example, some critics of the WTO-led trade liberalization regime claim that economic globalization has increased the

⁴⁷ *Id.* at 27. See also Murphy, *supra* note 45, at 287 (suggesting that “every nation must find practical ways to alleviate the insecurity of its citizens, as by providing better education, more effective job retraining and employment compensation, and health and pension coverage that employees can take from job to job”). The list of observers making the same point is very, very long. See, e.g., Danny Leipziger and Michael Spence, *Globalisation’s Losers Need Support*, FINANCIAL TIMES, May 15, 2007, at 11 (urging implementation of “programmes that help individuals [adversely affected by globalization] make employment transitions, and solid safety nets and assured access to basic services such as education and healthcare”); Scheve & Slaughter, *supra* note 3, at 35 (calling for “a New Deal for globalization—one that links engagement with the world economy to a substantial redistribution of income”, which in the USA would mean “adopting a fundamentally more progressive federal tax system”); Martin Wolf, *Employment Policies Can Ensure a Fair Share of the Feast*, FINANCIAL TIMES, Apr. 11, 2007, at 11 (asserting that the “right polic is to combine openness to trade with a politically acceptable sharing of the gains” that it brings).

⁴⁸ See *DOL’s TAA Program Faces Intense Criticism As House Panel Suggests Oversight Ahead*, BNA INTERNATIONAL TRADE REPORTER, Mar. 29, 2007, at 442–443.

income gap between the rich countries and the poor countries of the world. They point out, for example, that “[b]y [19]93 an American [who was getting by] on the average income of the poorest 10% of the [US] population was better off than two thirds of the world’s people”.⁴⁹ This is part of a trend in which economic growth slowed more in the past few decades for poorer countries than it did for richer countries. Some such critics also emphasize that the gap between rich and poor overall in the world has increased—a fact highlighted by the 1999 UN Human Development Report and bemoaned by numerous commentators.

Although these facts have led some critics to condemn economic globalism, and trade liberalization in particular, I am reluctant to jump to this conclusion. There is, I think, more to the story. Some studies emphasize that the aggregate gain emerging from trade liberalization does indeed help the poor countries, not just the rich countries.⁵⁰ Some of the studies even indicate that, if measured correctly, “the growth benefits of increased trade are, on average, widely shared” and that those countries that have “globalized” in the last decade or so have experienced both a decline in poverty *and* a narrowing of the gap between rich and poor.⁵¹ This suggests that even if the gap between rich and poor overall in the world has

⁴⁹ Robert Wade, *Global Inequality: Winners and Losers*, *ECONOMIST*, Apr. 28, 2001, at 72, 73.

⁵⁰ See *Grinding the Poor*, *ECONOMIST SURVEY*, *supra* note 3, at 10, 10–13 (disputing the view that globalization especially hurts poor workers in developing countries). Specifically, “the evidence suggests that multinational[] [corporations] . . . pay a wage premium” in low-income countries that amounts to about two times the wage paid by domestic employers in those countries. *Id.* at 13. “Separate studies on Mexico, Venezuela, China, and Indonesia have all found that foreign investors pay their local workers significantly better than other local employers”. *Id.* As another commentator has observed, however, wage levels alone do not give a full picture of the economic well-being of the workers who earn them, since wages “do not account for a long list of losses that have been documented in several setting”, such as “unhealthful working conditions, restrictions on personal freedom, loss of land and other assets in rural villages, damages from crime and violence (particularly to young women), disruption of families from sweatshops that employ only young women, lack of municipal infrastructure” and other factors. Volland, *supra* note 7, at 5. Many problems such as these, however, do not originate with trade or investment liberalization and will not be solved or eased by stifling trade or investment liberalization.

⁵¹ See Dollar and Kraay, *supra* note 3, at 17–18. These observers assert that “globalizers are narrowing the per capita income gap. Moreover, because most of the globalizers—especially China, India, and Bangladesh—were among the poorest countries in the world twenty years ago, their growth has been a force for narrowing worldwide inequality”. *Id.* For another recent work on this issue, see generally Martin Wolf, *WHY GLOBALIZATION WORKS* (2004) (noting that globalization generally has reduced inequality and the incidence of poverty).

increased, the *reason* for that widening gap is not globalization but instead a *failure* of some countries to globalize.⁵²

I wish to pursue this point one step further. Even if it were shown (contrary to the evidence I have just referred to) that trade liberalization does in fact contribute to a widening of the gap between rich and poor, is that a good reason to mount a broadside attack on trade liberalization? In my view, the answer should depend largely on whether the incomes of the poor—or the levels of their economic well-being generally—are rising or falling. There seems to be little question that even if the overall gap between rich and poor is widening, the economic circumstances of the poor are in fact improving, in that absolute poverty generally is on the decline, at least in countries that have globalized. If this were not the case—that is, if economic conditions in poor countries were worsening, not improving, as a result of trade liberalization—then I would argue for quick and drastic action to stifle trade liberalization, because I believe one of the single most important continuing challenges in today’s world is to attack poverty. However, as long as trade liberalization improves economic conditions in poor countries, I would be loathe to stifle it merely out of a concern that trade liberalization is improving economic conditions faster in the rich countries. Instead, I would (and do) support continued trade liberalization but at the same time seek to understand why its benefits flow more to the already-rich countries and whether some of that differential is undeserved or unjust.

Maybe the answer lies in the rules themselves. That is, if the benefits of free trade flow more to rich countries than to LDCs, perhaps that disparity comes from the particular way the GATT-WTO rules governing trade liberalization have been established. As I explained above, one of the most common formulations of that criticism is what Professor Bhala has called the “anti-Third World claim”—that the rules of GATT-WTO law are adverse to the interests of LDCs.

Professor Bhala has given close attention to this claim. In his masterful book entitled *Trade, Development, and Social Justice*, he examines the provisions in GATT-WTO law referred to as special and differential treatment rules—that is, those provisions expressly written into the GATT over time to benefit the LDCs, such as by granting preferentially low tariff levels on goods sold from those countries into developed countries and by providing longer periods of time for LDCs to achieve certain standards or targets regarding trade liberalization. As he explains, “[i]f the ‘anti-Third World

⁵² See *id.* at 18 (stating that “[t]he real losers from globalization are those countries that have not been able to seize the opportunities to participate in this process”).

claim' has traction, then surely its traction comes from the poor design of these [special and differential treatment] rules, the failure of these rules to do their job, or both".⁵³ Professor Bhala analyzes those issues from several perspectives and concludes in this way: "[T]he claim that international trade law, specifically [that portion of international trade law found in] special and differential treatment [rules], is 'unjust' in the way it treats the Third World[,] is exaggerated [but it is true that those preferential rules] could be more generous than they are now in GATT-WTO law".⁵⁴ Indeed, Professor Bhala identifies three improvements that would make them more generous: rules to enhance legal capacity among less developed countries to understand and work with GATT-WTO law; a rule to eliminate conditionality on the grant of preferences to LDCs; and a rule to fund export diversification projects in such countries. I explain and endorse these proposals in Chapter Six.

Before concluding an assessment of the "distributional and social injustice" criticism as it relates to the WTO and free trade, let me offer one additional perspective on it. I have explored above two main variants of the criticism when applied at the global level: (1) that free trade by nature (allegedly) contributes to the gap between rich and poor countries; and (2) that while free trade itself may be unobjectionable from the perspective of distributional justice, the particular rules built into the WTO regime are in fact (allegedly) objectionable because they fail to deliver promised benefits to the less developed countries. A third variant of the criticism (applied still at the global level) would be that distributional injustice lies not in free trade per se or in the WTO rules but rather in the fact that the rich and powerful countries do not play by the rules. This perspective appears in some well-written Oxfam International materials, including one paper in particular asserting that "[h]ypocrisy and double standards . . . characterise the behaviour of industrialised countries towards poorer countries in world trade".⁵⁵ That paper claims that the rich countries have pursued highly protectionist policies, including high tariff barriers against imports from less developed countries, high government subsidies on agricultural goods, and continued restrictions on trade in textiles and garments.

In my view, some such complaints are well-founded and well-documented. Indeed, the proposition that US cotton subsidies violated this country's GATT obligations was confirmed by a 2004 WTO dispute settle-

⁵³ Bhala-2003, *supra* note 44, at 3.

⁵⁴ *Id.* at 4, 5.

⁵⁵ Oxfam International, *Eight Broken Promises: Why The WTO Isn't Working for the World's Poor* at front cover (Oxfam Briefing Paper No. 9, 2001), available at http://www.oxfam.org.uk/what_we_do/issues/trade/bp09_8broken.htm (last visited June 30, 2007).

ment panel decision. Viewed more broadly, that panel ruling “confirms many of the criticisms developing countries have made in recent years: that industrialized countries have not fulfilled their commitments to open their agriculture markets and reduce the farm subsidies that distort trade”.⁵⁶

In my view, the economically developed countries should be most fastidious—not sloppy, not nonchalant, not playing fast-and-loose—about ensuring that their own policies and actions are consistent with the international trade rules that those countries themselves have been most instrumental in establishing and in urging LDCs to adopt and follow. In Chapter Six, I identify some specific recommendations along these lines.

B. Austerity Measures, the IMF, and Social Ruin

The overall criticism that GEOs bring “distributional and social injustice” applies differently in the case of the IMF. In this context, the critics complain that IMF operations hurt the poor and generally undermine social values and human rights. Such critics claim that even if the austerity measures that the IMF pressures its borrowing member countries to adopt do in fact provide net overall economic and financial benefits to those countries—by helping them to restore economic stability or to avoid defaulting on foreign debts, for example—they win those overall benefits at the expense of the poor. Specifically, IMF-mandated measures to balance a government’s budget by slashing expenditures and raising revenues force that government (so the criticism runs) to eliminate public funding for social programs and to increase the price of social services, making health care and education unaffordable for the poor. Similarly, IMF-mandated policies to encourage foreign investment can lead to the abolition of minimum wage and collective bargaining laws. All these results contribute to what these critics would identify as a particular evil: enlarging the gap between rich and poor within a society.

Expressed in such blunt terms as these, this criticism strikes me as inaccurate because it both overstates and understates the IMF’s role. It overstates the IMF’s role by suggesting that the IMF-prescribed policies are so detailed as to dictate specific budgetary decisions by the governments of borrowing countries. But this is not the case (however convenient it might be for a borrowing government to suggest otherwise). Consider the letter

⁵⁶ Oxfam International, *Finding the Moral Fiber*, at 3 (Oxfam Briefing Paper No. 69, October 2004), available at http://www.oxfam.org.uk/what_we_do/issues/trade/bp69.cotton.htm (last visited June 30, 2007). See also Kevin Kennedy, *The Incoherence of Agricultural Trade, and Development Policy for Sub-Saharan Africa: Sowing the Seeds of False Hope for Sub-Saharan Africa’s Cotton Farmers?*, 14 KANSAS JOURNAL OF LAW & PUBLIC POLICY 307, 307 (2005).

of intent submitted by the government of Indonesia in late October 1997, when the Asian financial crisis had hit that country. That letter of intent (which, as explained in the summary of IMF operations in Chapter Three, would have emerged from discussions with IMF staff) did not dictate specific budget cuts. It did, however, specifically state that “it is imperative that the adjustment program does not result in a worsening of [the] economic and social conditions [of the poor] . . . Measures necessary to achieve fiscal targets will protect expenditures on health and education . . . [and] budgetary allocation for social spending will be increased”.⁵⁷

In addition to overstating the IMF's role, the blanket criticism that the IMF insists on financial policies that create distributional inequities and ignore the social aspects of a country's well-being is inaccurate in another way: it understates the degree of attention that the IMF has given in recent years to the social aspects of a country's well-being. For well over a decade, numerous IMF-supported programs have been designed to provide specific protections for the poorest consumers and workers in borrowing member countries.⁵⁸ In urging governments to provide such protections, the IMF has advanced the view (in one of its numerous “social dimensions” publications) that one of the elements in a strategy of high-quality growth for a country is “sound social policies, including social safety nets to protect the poor during the period of economic reform, cost-effective basic social expenditures, and employment-generating labor market policies”. Likewise, in a recent annual report, the IMF offered this description of how social issues bear on its operations:

The IMF is committed to integrating poverty and social impact analysis in programs supported by lending under the [IMF's Poverty Reduction and Growth Facility]. The purpose of this analysis is to assess the implications of key policy measures on the well-being of different social groups, especially the vulnerable and the poor.

⁵⁷ Letter of Intent and Memorandum on Economic and Financial Policies from Government of Indonesia, to Michael Camdessus, Managing Director, IMF (Oct. 31, 1997). Similarly, the letter of intent submitted by the government of Indonesia in mid-January 1998, when the crisis had deepened, did not indicate particular budget cuts, and specifically called for the removal of subsidies to include *exemptions* “for prices of kerosene and diesel fuel, where increases will be kept to a minimum so as to protect the poor”.

⁵⁸ Details on these are available in numerous IMF publications and Web site entries, as well as in Head, GLOBAL ECONOMIC ORGANIZATIONS, *supra* note 16, at 82–83 (where citations are provided to the specific sources of quoted passages appearing in the remainder of this paragraph and the following two paragraphs).

When analysis indicates that a particular measure (for example, currency devaluation) may harm the poor, the impact is addressed through the choice or timing of policies, the development of countervailing measures, or social safety nets.

That same report listed some of the safety nets built into IMF-supported programs: “subsidies or cash compensation for particularly vulnerable groups; improved distribution of essential commodities, such as medicines; temporary price controls on some essential commodities; severance pay and retraining for public sector employees who have lost their jobs; and employment through public works programs”.

In short, the IMF does in fact pay a great deal of attention today to social issues and distributional fairness. It is therefore simply disingenuous to assert, as some critics do in sweeping statements, that the IMF is in the business of balancing budgets on the backs of the poor, or that the IMF forces governments to ignore social values and human rights.

I do believe, however, that more should be done. I therefore endorse a nuanced version of the criticism: the IMF still does not give *enough* attention to issues of distributional and social justice.

I see two reasons for this shortcoming. First, any efforts by the IMF to wade into issues of social justice or distribution of wealth run the risk of being rebuffed by the governments that the IMF is supposed to serve. Second, any such efforts can expose the IMF to claims that it is biased toward some groups and their interests and dismissive of others. This possibility of double attack has been described in this way:

Almost paradoxically, the Fund faces a great deal of opposition when it tries to mitigate the effects of adjustment programs on the poor. Many countries resent a perceived violation of national sovereignty, viewing external involvement in sensitive issues of poverty and income distribution as paternalistic gestures by the West. On the IMF's side, some staff members are hesitant to move away from their traditional posture of neutrality toward distributional issues, since involvement can lead to accusations of bias in favor of specific groups. This dilemma is especially evident when the Fund is pressured to consider issues ranging from environmental degradation to human rights.⁵⁹

⁵⁹ Garuda, *supra* note 19, at 39.

Supplementing these reasons for IMF reluctance to press governments on social justice issues is a very practical constraint: it is difficult to know exactly what effects IMF-prescribed policies will have on the poor. The elimination of food subsidies, for example, might actually help the poor, or at least many of them, “by increasing the incomes of rural farmers”, which make up a large fraction of the poor in many developing countries.⁶⁰

Notwithstanding all these constraints, I believe the IMF should stride more robustly into these issues than it has done so far. This could be done in part (1) by placing more pressure on borrowing governments to implement IMF prescriptions for economic discipline in a way that provides solid protection of the poor, the disadvantaged, the working class, and the human and physical environment in which they live, and (2) by linking IMF support to a member country’s observance of certain key treaty commitments on those same subjects. In Chapter Six I offer some details in this regard, emphasizing in particular why such an approach is appropriate and how it might be accomplished through a combination of IMF Charter revisions and new policies.

C. Human Rights and the MDBs

As has been emphasized numerous times already, the World Bank and the regional MDBs focus on project financing. Project financing typically involves specific economic inputs for particular undertakings that have direct impacts, often physically, on people. It is perhaps for this reason that MDB operations trigger more complaints of human rights violations than do IMF or WTO operations. And indeed, this is one of the most emphatic of the criticisms leveled at the MDBs.

Specifically, critics complain that the MDBs typically give little or no regard to human rights of various types, including the right to education and the rights of indigenous people, and that the MDBs act independently of any accepted human rights norms and institutions. MDB-supported projects and policies, it is said, often result in the setting of prices for health, education, and water services out of the reach of ordinary people. Some critics go on to charge that MDBs support, at least tacitly, the notion of cultural exceptionalism by which universal human rights norms are ignored by some countries. In addition, the MDBs are ineffective, some critics claim, at addressing corruption in government, thus disregarding the human right to effective governance. Indeed, the MDBs fuel corruption (according to the critics) by virtue of the huge financial flows that they control and disburse to government officials.

⁶⁰ *Id.* at 36.

Such a sweeping assertion that the MDBs completely disregard human rights of all sorts—like the assertion that the IMF completely disregards distributional and social issues—is poppycock. It is absurd to suggest that the MDBs give no regard to human rights in their operations. They do, after all, mandate numerous types of assessments during project design and selection, for example, (1) to guard against any interference with the rights of indigenous people, (2) to enhance the role of women, and (3) to assess the impact of proposed projects on the social fabric of the communities that the project would directly affect. In the case of the World Bank, these and other requirements emerged in part from a series of events, occurring largely in the 1990s, that brought the “social capital debate” into the institution, as a result of more than a decade of building alliances around such concepts as participation, environment, sustainability, empowerment, and social capital—alliances that operate now within the World Bank and link people in the institution with academics, NGOs, and others.⁶¹

However, the MDBs could and should take further steps in this regard. One such step, in my view, is to create a strong linkage between the MDB charters (that is, the treaties that serve as their governing documents) and the key human rights treaties, so that countries wishing to benefit from MDB membership will be required to hew to the key provisions in those human rights treaties. I shall discuss the details of that proposal in Chapter Six, but let us first consider not the *what* but the *why*. That is, why should the MDBs take on additional responsibility in the area of human rights?

I would offer two related reasons: first, issues of human rights protection deserve careful and effective attention by a public institution operating at the international level; and second, the MDBs have the resources and the leverage to provide that careful and effective attention. I assume that the first of these points is fairly well accepted; an international consensus seems to have developed that effective action is needed at the international level to protect human rights, and evidence of this consensus appears in the work of several UN agencies.

That is why the second point is so important. I believe that in today’s world—at least for now—the prime movers in defining the terms under which economic development (broadly defined) takes place—and indeed in defining a wide range of standards by which national governments are

⁶¹ See Anthony Bebbington, Scott Guggenheim, Elizabeth Olson, and Michal Woolcock, *Exploring Social Capital Debates at the World Bank*, 40 *JOURNAL OF DEVELOPMENT STUDIES* 33 (2004). For descriptions of AsDB policies and practices in this regard, see John W. Head, *Asian Development Bank*, in *INTERNATIONAL ENCYCLOPAEDIA OF LAWS* 82–86 (R. Blanpain ed., 2002) [hereinafter Head, *Asian Development Bank*]. Information about the corresponding policies and practices of other MDBs is available on their Web sites.

to provide services and leadership to their populations—are the institutions that we are scrutinizing in this book: the WTO, the IMF, the World Bank, and the regional development banks. Unlike the global and regional regimes established to focus exclusively on human rights protection, these global economic institutions have the kind of influence that seems to matter most in today's world: economic influence. This being the case, I believe the response to human rights criticisms directed at the MDBs should not be (1) to shut down the MDBs so that they cannot cause or facilitate any human rights abuses or (2) to restrict the mission of the MDBs in a way that excludes human rights considerations, leaving such considerations to other institutions. Instead, the response to such criticisms should be to create formal and legal linkages between the MDBs and broadly accepted treaty norms on human rights and the existing array of entities specifically responsible for working on human rights issues.⁶² This point will be elaborated further in Chapter Six.

For now, however, we shift our focus to this chapter's next "cluster" of criticisms of the GEOs. So far in this chapter we have looked at criticisms under the rubrics of (1) "bad policies, projects, and performance" and (2) distributional and social injustice. Now we turn to the environmental criticisms.

III. ENVIRONMENTAL DEGRADATION

As summarized above in Chapter Two, a third general criticism of the GEOs' policies and operations runs this way: "A particularly troubling and dangerous consequence of GEO operations is that they disregard the overriding need to protect the physical environment that we all share. This is especially true of (i) the MDBs, whose projects often have devastating effects, and (ii) the WTO, which causes a race to the bottom' in national environmental regulations". The following paragraphs examine those criticisms.

⁶² For an excellent and concise article on MDB responsibilities and opportunities to contribute to the efforts to protect human rights, see generally Herbert V. Morais, *The Globalization of Human Rights Law and the Role of International Financial Institutions in Promoting Human Rights*, 33 *GEORGE WASHINGTON INTERNATIONAL LAW REVIEW* 71 (2000). Herbert Morais, a former senior legal official at the World Bank, the AsDB, and the IMF, and a colleague and close friend of mine, presents in that article the best synopsis I have seen of the development of international human rights law in the twentieth century; then he discusses his view of the proper role of the MDBs (and the IMF) in human rights protection, relying in part on the philosophy of Nobel laureate Amartya Sen and concluding that the MDBs and the IMF "are well-positioned, by virtue of their vast resources and influence, to do even more in the years ahead to further promote human rights in their member countries". *Id.* at 96. I concur in his views.

A. The MDBs and the Environment

Much of what I have said in the preceding section about MDBs and human rights also applies to MDBs and the environment. Many observers assert that MDB-financed projects have had devastating effects on the environment. Some critics claim, for example, that the MDBs favor large dam-building and road-building projects, that they both permit and promote an ongoing addiction to fossil fuels, that they disregard the environmental effects of the projects at both the design and the implementation phase, and that they are generally out of step with modern views of sustainable development.

Some of this criticism is out of date. For example, those critics who complain about MDB involvement in big hydroelectric dams apparently do not realize that the MDBs are now largely out of the big-dam-building business.⁶³ Those critics who claim that the MDBs regularly disregard effects of the projects they design either are engaging in intentional misinformation or are ignorant of the enormous change that has taken place over the past two decades in the mindset, the policies, and the structures of the MDBs to incorporate environmental considerations into the operations of those institutions. The World Bank recruited its first environmental advisor in 1969. By 1990 it had a total of fifty-four high-level staff members, assisted by over twenty consultants, working in its Environment Department and regional Environmental Divisions, and it had adopted an Operational Directive on Environmental Assessment in order “to ensure that development options are environmentally sound and sustainable and that any environmental consequences are recognized early in the project cycle and taken into account in project design”.⁶⁴ As of 1998 it had over five times

⁶³ See *Statistics on the World Bank's Dam Portfolio* (Nov. 2000), available at [http://lnweb18.worldbank.org/ESSD/sdvext.nsf/43ByDocName/StatisticsontheWorldBanksDamPortfolio/\\$FILE/StatisticsontheWorldBank'sDamPortfolio.pdf](http://lnweb18.worldbank.org/ESSD/sdvext.nsf/43ByDocName/StatisticsontheWorldBanksDamPortfolio/$FILE/StatisticsontheWorldBank'sDamPortfolio.pdf) (last visited July 22, 2007) (showing that less than 1 percent of World Bank lending in recent years has been for new dams, and that such lending has declined substantially from the 1970s and 1980s, so that World Bank funding is involved now in only about one percent of new dam projects worldwide). Moreover, the World Bank has put in place extensive “safeguards” regulations relating to dams, including the requirement that the planning, construction, and start of operations of large dams be subjected to the scrutiny of a special independent panel. Significantly, the World Bank declined to participate in China's huge Three Gorges Dam project.

⁶⁴ The World Bank, *THE WORLD BANK AND THE ENVIRONMENT FIRST ANNUAL REPORT, FISCAL 1990 11* (1990), cited and excerpted in John W. Head, *Environmental Conditionality in the Operations of International Development Finance Institutions*, 1 *KANSAS JOURNAL OF LAW & PUBLIC POLICY* (1991). For information on the current version of World Bank environmental assessment policies, see The World Bank, *Operational Manual*, available at <http://wbln0018.worldbank.org/Institutional/Manuals/OpManual.nsf/023c7107f95b76b88525705c002281b1/9367a2a9d9daeed38525672c007d0972?OpenDocument> (last vis-

that many environmental specialists (over 300) and had committed close to \$12 billion for scores of primarily environmental projects. Now, about a decade later, the World Bank's commitment to environmental matters is reflected in the fact that it has a vice presidency for sustainable development, has implemented numerous operational policies on environmental and related issues, and has taken a lead role in creating new funding mechanisms to support sustainable development. Similar steps have been taken at the AsDB, at the IADB, and at the AfDB.⁶⁵ In the case of the EBRD, as noted above, a specific mandate was included in the charter, requiring that institution "to promote in the full range of its activities environmentally sound and sustainable development". As a consequence of these changes, the MDBs all have procedures for conducting environmental impact assessments on any proposed projects that could have any significant effect in this regard, and most of the reports of these assessments are publicly available.

However, more should be done. A study undertaken for the AsDB a few years ago concluded that although that institution did a relatively good job of incorporating environmental considerations into its design and selection of projects for AsDB financing, these efforts often did not get carried through adequately to the project implementation stage. That is, the best laid plans for avoiding or mitigating environmental damage often went awry in the process of actually building a road or carrying out some other project work. The report recommended more careful drafting of contracts, the inclusion of environmental covenants in mandatory checklists for review missions, the more effective use of remedies for non-compliance, and several other initiatives. Efforts should be undertaken at all the MDBs to ensure that these and other steps are taken.

More fundamentally, however, I believe that environmental considerations should be placed at the heart of MDB operations as a legal and pol-

ited July 22, 2007). For further sources from which the information in this paragraph is drawn, see Head, *GLOBAL ECONOMIC ORGANIZATIONS*, *supra* note 16, at 139-141.

⁶⁵ For a description of measures taken at the AsDB in respect of environmental protection, see Head, *Asian Development Bank*, *supra* note 61, at 78-80. Initiatives taken in recent years include the financing of various projects to fight acid rain, reduce air pollution, protect coastal resources, and mitigate emissions of greenhouse gases, as well as the signing of a memorandum of understanding with World Wide Fund for Nature. The attention given to environmental issues in the AsDB now is dramatically greater than that given in the 1980s, when I worked at the institution. At that time, the efforts mainly of one staff member, Dr. Colin Rees, succeeded in establishing an Environment Unit that consisted of merely two professional staff members as of 1988. For information about measures taken at the AfDB and the IADB, see their Web sites, <http://www.afdb.org> and <http://www.iadb.org>, respectively.

icy matter. The year 2007 marked the thirty-fifth anniversary of the Stockholm Conference on the Human Environment. Just as in 1972, the world remains divided on some key issues of environmental protection, although now the fault lines appear more over the issue of who should pay for environmental protection than over the question of whether a national government has an obligation to protect its environment. Fortunately, an answer to the question of payment appears in the form of the Global Environment Facility (GEF). That initiative, which emerged out of collaborative efforts in the late 1980s, centers around a fund that is jointly administered by the World Bank, the UN Development Program, and the UN Environment Program. Under the GEF, the extra costs of using environmentally friendly technology and techniques in development activities can be offset with resources contributed by the richer, more industrially advanced countries.⁶⁶ Other initiatives of this sort should be undertaken, as I propose in Chapter Six. At the same time, the charters of the MDBs should be linked to the key environmental protection treaties—relating, for example, to biodiversity and global warming—also as described more fully below in Chapter Six.

B. Racing to the Bottom

The environmental issues that arise in the context of the MDBs, as discussed above, are different from those that arise in the context of the WTO. The MDBs' main impact on the environment is quite direct, as a result of projects (particularly infrastructure projects) that the MDBs help design and finance. By contrast, the WTO's main impact on the environment is indirect, and this fact is evident from the criticism that is most widely leveled at the WTO in this regard: it is claimed that the WTO, as the institution responsible for administering the regime of liberal trading rules, is thereby to blame for the fact that free trade is fostering a "race to the bottom" in the regulatory standards for environmental protection. (The same "race to the bottom" argument, by the way, applies to issues of worker safety and health, which will be discussed in section IV of this chapter when we turn to sovereignty concerns.)

⁶⁶ For descriptions of the Global Environment Facility, see Global Environment Facility, About the GEF, at http://www.gefweb.org/What_is_the_GEF/What_is_the_gef.html (describing the functions and purposes of the GEF) (last visited June 30, 2007). Numerous other sources are cited also in Head, GLOBAL ECONOMIC ORGANIZATIONS, *supra* note 16, at 142 n.99. A similar theme—having economically developed countries provide financial wherewithal to LDCs in order to protect the environment—appears in the establishment of the Ozone Trust Fund under the Montreal Protocol on Substances that Deplete the Ozone Layer. Information on this appears on the Web site of the Secretariat of the Multilateral Fund for the Implementation of the Montreal Protocol, at <http://www.unmfs.org/general.htm>.

The environmental “race to the bottom” criticism actually has at least two versions. In one, the “race” is being run by businesses or whole industries who are relocating their manufacturing operations to countries that have especially lax regulations, or no regulations at all, relating to environmental protection. For example, a company might easily (according to the criticism) be drawn to a “pollution haven” because the company will, in that location, incur little or no expense in treating waste products that would, in a country with adequate environmental standards, require costly treatment or abatement.

In the other version, the “race” is being run by the governments of various countries, especially LDCs, competing with each other in an effort to attract or retain businesses within their borders by applying extremely lax environmental standards. In either version of the criticism, free trade is ultimately to blame for two complementary evils: the relocation of the industries, which results in job losses (in at least one country), and the encouragement of practices that bring injury to the environment that the relocated industries foul or to the workers whom they employ. Critics voicing this “race to the bottom” criticism often call for a reversal of the free trade policies that cause these alleged evils.

I find the argument unpersuasive, especially in its “bottom line” condemnation of free trade. While evidence has been cited for both types of “race” described above, the evidence is not conclusive. More importantly, however, even if either of these types of “race” is being run, that would not be grounds to condemn trade liberalization as such. I explain both of these points in the following paragraphs.

As for the claim that businesses are racing to place their manufacturing operations in “pollution havens”, there is a strong difference of opinion. Some observers point out that there are scores of specific reasons that might prompt a business to shift its operations from one place to another, and the cost of environmental compliance is unlikely to be a dispositive reason:

There is not much evidence, for example, that polluting industries have been migrating from developed to developing countries to take advantage of lax environmental standards. The cost of pollution control is relatively low in developed countries—(no more than 1 per cent of production costs for the average industry)—and besides, because most polluting firms are capital intensive, they tend to cluster in developed countries where capital is readily available.⁶⁷

⁶⁷ John O. McGinnis and Mark L. Movsesian, *The World Trade Constitution*, 114 HARVARD LAW REVIEW 511, 559 (2000). See also *WTO Report: The Need for Environmental*

On the other hand, some observers challenge these assertions. Here is an example of such a challenge:

[A]verages are meaningless in this context [because] . . . [p]ollution control costs can be crucial for power plants, chemical plants, forestry and mining [which are among the types of operations that cause the most environmental damage]. Furthermore, estimates of pollution costs may not include health and safety factors governed by OSHA in the U.S. and governed by noone [*sic*] in many [less developed countries].⁶⁸

One reason for disagreement as a factual matter over the question of a “race to the bottom” by *industries* might be that circumstances shift over time. An interesting World Bank document (dated 2001) reflects a two-part view incorporating parts of both a “race to the bottom” argument and a “race to the top” argument. The article refers to an inverted U-curve describing a progression over time, in which, as a LDC develops its economy, there is, in certain sectors and circumstances, (1) some racing to the bottom initially in less sophisticated, production-oriented industries, and (2) a race to the top once the country becomes more sophisticated, service-oriented, and technologically advanced.⁶⁹

What about the other type of alleged “race to the bottom”, this one between *countries*? Here, too, the factual foundation for the claim is subject to sharp disagreement. That is, the claim that countries are racing to relax their environmental standards in an effort to attract or retain pollution-prone manufacturers is the subject of contradictory evidence and analysis. On the one hand, Sierra Club officials suggest that US environmental and health standards have been relaxed in response to free-trade obligations,⁷⁰

Cooperation, available at http://www.wto.org/English/tratop_e/envir_e/stud99_e.htm (last visited June 30, 2007) (asserting that the comparative advantage of environmental laws is insignificant for most industries). For a similar view, see Jones, *supra* note 2, at 115.

⁶⁸ Volland, *supra* note 7, at 4.

⁶⁹ See *Is Globalization Causing a “Race to the Bottom” in Environmental Standards?*, available at <http://www1.worldbank.org/economicpolicy/globalization/documents/AssessingGlobalizationP4.pdf> (last visited July 11, 2007).

⁷⁰ See Margrete Strand, *Poisoned Workers and Poisoned Fields: Stop NAFTA’s Fast-Track Expansion to South America*, available at <http://www.sierraclub.org/trade/environment/poisoned.asp> (last visited June 30, 2007) (stating that the US Environmental Protection Agency, in order to help US growers compete with surging imports, “has increased chemical risks to farmworkers by reducing a critical safety factor—the reentry period—the time between when pesticides are sprayed on crops, and when growers can order farmworkers to reenter the fields”). See also *No Globalization Without Representation!*,

and other commentators hypothesize that developing countries fail to adopt environmentally friendly standards because they would prove costly for domestic producers⁷¹ or that “pollution havens” might emerge in some areas of LDCs in order to attract coal plant construction.⁷² Indeed, the WTO itself has acknowledged that “[e]nvironmental measures are sometimes defeated because of competitiveness concerns”.⁷³

On the other hand, some observers find just the opposite trends at work. One source claims that “with respect either to safety or to environmental impact, signs of a race to the bottom are . . . hard to find. All the movement is the other way. Everywhere, the adoption [by governments] of more demanding environmental standards gathers pace as incomes rise”.⁷⁴ Another asserts that “[t]he clear trend in rich and poor countries alike is for ever tighter regulation” in terms of environmental protection—as well as in terms of labor conditions, a topic often joined with environmental protection in this context—and that “[i]f globalisation has started a race in these areas, it is to the top, not the bottom”.⁷⁵

It is worth noting in this respect that specific steps have been taken in the context of some trade agreements to prevent governments from running a race to the bottom in an effort attract investors seeking “pollution havens”. Although the NAFTA side agreement on environmental protec-

available at <http://www.sierraclub.org/trade/summit/fact.asp> (last visited June 30, 2007) (asserting, but without offering documentary evidence, that the USA has weakened border food inspections and developed weak standards concerning imported agricultural pests).

⁷¹ See, e.g., Lana Martin, *World Trade Organization and Environmental Protection: Reconciling the Conflict*, CURRENTS: INTERNATIONAL TRADE LAW JOURNAL, Winter 2000, at 69 (discussing the adequacy of the WTO's environmental policies).

⁷² See Chris Baltimore, *US Power Deregulation May Cause Trade Woes*, available at posting of David Orr, david@livingrivers.net, to CONS-SPST-ENERGY-FORUM@Lists.SIERRA-CLUB.ORG (Nov. 9, 2001) (on file with the author). That article also refers to a 2001 US Energy Department report “that attributed increased power plant construction in Mexico to less stringent environmental regulations”. *Id.* This might be evidence of the first kind of “race to the bottom” referred to above—a move by businesses to place their operations in “pollution havens”.

⁷³ *WTO Report*, *supra* note 67.

⁷⁴ *Who Elected the WTO?*, *supra* note 4, at 26.

⁷⁵ *A Crisis of Legitimacy*, ECONOMIST SURVEY, *supra* note 3, at 18, 20. See also Jones, *supra* note 2, at 115 (noting that empirical research “tends not to support these claims [of a race to the bottom]”); C. Fred Bergsten, in *Preface to Graham*, *supra* note 3, at xii (asserting that “[w]ith respect to the environment, there is no evidence of any ‘race to the bottom’ where governments, in order to attract or retain direct investment, lower environmental standards; in some cases, there might even be a ‘race to the top’”).

tion—the North American Agreement on Environmental Cooperation (NAAEC)—has attracted criticism as being less rigorous than it should be, there can be no doubt that the side agreement represents a growing appreciation of the importance of environmental protection. That same impulse has led to the inclusion of environmental protection provisions in several other recent bilateral trade agreements negotiated by the USA—these include the agreements with Jordan, Morocco, Australia, Bahrain, Oman, Chile, and most recently (June 2007) South Korea. Moreover, with the 2006 Democratic takeover of the US Congress, US trade negotiators (especially in the Bush-Cheney administration) will need to give increased attention to environmental issues in the context of future bilateral trade agreements.⁷⁶

It appears, then, that although more liberal trade (and investment) rules do prompt an increase in production in LDCs (bringing with it more jobs), there is no consensus as to whether the other linkages or “races” that some opponents of globalization complain about are in fact real or significant.

But what if they were? What if unimpeachable evidence appeared tomorrow revealing a frantic race to the bottom, in either or both of the forms described above—that is, by businesses seeking “pollution havens” or by countries wanting to attract such business? Should we then put the brakes on trade liberalization by jettisoning the key principles that I summarized earlier in my “nutshell” account of the GATT and by shutting down the WTO?

Of course not. The free trade regime established by the GATT and the WTO rests on the proposition that general economic welfare is increased by permitting trade in goods to go forward in ways that reflect the comparative advantages enjoyed by countries or companies. One of the key principles of that liberal trade regime is that if the comparative advantage is artificial—“unauthentic”, to use the term I introduced above—then a country can depart from its obligation to refrain from tariff increases or to avoid non-tariff barriers. Hence, our response to a race to the bottom, if one were to occur, should not be to abandon free trade generally but should instead be to pay more attention to that specific element of the free trade regime. As I explain more fully in Chapter Six in offering several specific recommendations, I believe our aim should be to eliminate free externalities (that is, to eliminate the possibility of businesses using public resources in their operations without paying for those resources) by strengthening the application and enforcement of multilateral environmental regulations, especially those found in key environmental protection treaties.

⁷⁶ See *White House Left to Trade on Terms Set by Congress*, FINANCIAL TIMES, May 14, 2007, at 3.

IV. ENCROACHMENTS ON SOVEREIGNTY

A. WTO Prohibitions on Social Protectionism

Let us stay with the WTO a bit longer as we shift our attention to another criticism that is leveled against that institution. (As we shall see in the latter part of this section, it is a criticism that also targets the other GEOs, although somewhat differently.) This criticism focuses on sovereignty.

As applied to the WTO, the criticism claims that even if free trade does not in itself cause a race to the bottom in environmental protection (and in other respects, especially labor standards), the WTO fails to give adequate attention to these matters in its operations—and that indeed the WTO prohibits its member countries from imposing and enforcing certain regulations (particularly environmental regulations) that those member countries favor.

This criticism has generated a great deal of commentary, perhaps as much as any other criticism leveled at the WTO. Two powerful magnets for anti-WTO environmental advocates have been the *Shrimp-Turtle* and *Tuna-Dolphin I* cases. In the *Tuna-Dolphin I* case, which was brought by Mexico and decided in 1991, a GATT dispute panel found that the USA had acted contrary to its GATT obligations in banning the importation of tuna caught with purse seine nets in a manner that would kill many dolphins.⁷⁷ In the *Shrimp-Turtle* case, which was brought by India, Malaysia, the Philippines, and Thailand and was decided in 1998, a WTO dispute body likewise found a GATT violation in the US embargo of shrimp imports from countries that fail to require the use of turtle exclusion devices and that therefore allow fishing methods that endanger sea turtles.⁷⁸

⁷⁷ Three years later, the so-called *Tuna-Dolphin II* case arose. It involved a secondary boycott by the USA, which (as in *Tuna-Dolphin I*) banned the importation of tuna caught with purse seine nets, plus (unlike *Tuna-Dolphin I*) the importation of tuna from a country that was involved not with the actual act of using the purse seine nets but in the processing of tuna from another country that had caught the fish with purse seine nets. As in *Tuna-Dolphin I*, the WTO ruled against the USA in *Tuna-Dolphin II* (and, according to many observers, against the environment).

⁷⁸ Another case, with a different result, is worth noting. In the *EC Asbestos* case, decided in 2001, the WTO's Appellate Body upheld France's initiative to ban (under GATT Article XX(b)) the importation of Canadian products with asbestos in them. This decision was regarded by some observers as having taken pressure off of the WTO from the moderate environmentalists, on grounds that it showed some WTO "support for" the environment. That is unpersuasive: because of the numerous studies showing the harmful effects of asbestos (on human life), it would have been difficult not to uphold France's ban.

According to many critics, such findings are inappropriate because they encourage behavior that recklessly kills other mammals and because they interfere with the sovereign right of states to adopt what I would term “externally directed” environmental protection standards—that is, standards that in effect apply outside a country by prohibiting importation of items falling short of those standards.

Obviously, this criticism would apply to labor standards and human rights standards in roughly the same manner as it applies to environmental issues: a state should be free (according to the proponents of this criticism) to prohibit the importation of goods produced by slave labor or, more generally, to require that items imported into its territory meet certain minimum human rights standards. For the WTO to interfere with such state regulations, the critics say, both (1) violates the principles of state sovereignty and (2) encourages behavior that is inconsistent with generally accepted human rights.

Naturally, this criticism has special resonance where the behavior that states purport to regulate by such “externally directed” measures (that is, restrictions on imports) is itself prohibited or discouraged by treaty law. For example, the 1982 Convention on the Law of the Sea, which has been ratified by most of the international community, includes extensive provisions aimed at protecting marine mammals. And indeed, even the GATT itself (in Article XX(b)) expressly permits trade restrictions that are “necessary to protect human, animal or plant life or health”, and (in Article XX(g)) it permits, in specified circumstances, trade restrictions “relating to the conservation of exhaustible natural resources”.⁷⁹

Does this criticism hold water? I believe it does, in large part. Like many other observers, I have a negative reaction to the decisions in the *Shrimp-Turtle* and *Tuna-Dolphin I* cases and believe that the WTO fails to give adequate attention to environmental protection standards (and, on similar reasoning, to labor standards). While I recognize that the two decisions

⁷⁹ The pertinent provisions, together with the *chapeau* (introductory passage) read as follows:

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures: . . . (b) necessary to protect human, animal or plant life or health; . . . (g) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restriction on domestic production or consumption.

themselves have attracted support on some reasonable grounds,⁸⁰ I believe they were decided incorrectly and that environmental protections should play a central role in trade policy.

The first of my assertions, that the cases were decided incorrectly, turns on a fundamental point: the definition or concept of free trade. In examining this issue, David Driesen has identified three possible alternative concepts of free trade: “a concept based on the principle of non-discrimination, a concept based on an international non-coercion principle, and a concept based on a principle of laissez-faire government”.⁸¹ After demonstrating that the pertinent literature, even going back to Adam Smith and David Ricardo, offers little clear guidance on just what “free trade” means, Driesen explains the three competing concepts. Under the first—the non-discrimination concept—free trade amounts to a prohibition on any government regulations of imports that discriminate against such imports, with “discrimination” defined as “imposition of a standard or restriction on imports that one does not impose upon one’s nationals”. Under the second—the non-coercion concept—free trade amounts to a prohibition on government regulations that attempt to coerce other countries into adopting a particular policy or practice. Under the third—the *laissez-faire* concept—free trade means trade unencumbered by national laws that might increase prices.

Driesen asserts that his three-part conceptual analysis “facilitates inquiry into which principles actually explain the decisions” in the cases mentioned above, and in other health and safety cases, “and why *laissez-faire* and non-coercion principles appear more troubling than facial anti-discrimination principles” (that is, principles prohibiting trade practices that are discriminatory on their face). Driesen favors “focus[ing] exclusively upon free trade as trade free of discrimination” even though this would “entail some reduction in the scope of international trade law” because it would permit certain types of import regulations—such as those in the *Tuna-Dolphin I* and *Shrimp-Turtle* cases—so long as they did not involve discrimination.⁸²

I believe the same “non-discrimination” concept of free trade should be at work in cases involving labor standards, human rights standards, and

⁸⁰ See, e.g., McGinnis and Movsesian, *supra* note 67, at 590–593 (asserting that the *Shrimp-Turtle* decision construed GATT provisions in ways that reflect a Madisonian view of promoting accountable government, as well as transparency).

⁸¹ David M. Driesen, *What is Free Trade?: The Real Issue Lurking Behind the Trade and Environment Debate*, 41 *VIRGINIA JOURNAL OF INTERNATIONAL LAW* 279, 285 (2001).

⁸² *Id.* at 293, 307, 341, 344.

other forms of social protection.⁸³ Under this approach, for example, it would be GATT-legal for the USA to prohibit the importation of goods that did not meet certain minimum labor standards, as long as the prohibition did not discriminate against the imported goods by imposing the minimum labor standards on the production of the imported goods but not on the production of US-produced goods. And such a (non-discriminatory) prohibition could not be struck down merely because it amounted, in effect, to coercion of other countries to adopt the specified minimum labor standards or somehow ran afoul of a broad *laissez-faire* concept of free trade.

I would go further than this. Not only should more leeway be provided to national governments to implement (without discrimination) environmental protections and human rights protections in as aggressive (that is, as protective) a manner as they see fit; in addition, the relationship between GATT rules and environmental treaties and human rights treaties should be strengthened. As with the *Shrimp-Turtle* and *Tuna-Dolphin I* decisions described above, this is a controversial topic. On balance, however, I believe the long-term importance of promoting environmental sustainability and human rights protections must outweigh the more immediate economic advantages of trade—or, to state the point more precisely, the long-term benefits of providing protections for the environment, for labor rights, and for human rights more generally (and the long-term costs of denying those protections) must be included in the cost-benefit calculation of trade liberalization.

In short, free trade rules should *not* trump all other rules. Instead, the substantive protections and the procedural requirements set forth in multilateral environmental and labor treaties (and certain other human rights treaties) should in my view take precedence over GATT substantive protections and procedural requirements,⁸⁴ if and when inconsistencies arise.

⁸³ For a persuasive discussion of why “human rights are relevant for the interpretation and application of WTO rules”, see Ernst-Ulrich Petersmann, *Human Rights and the Law of the World Trade Organization*, 37 JOURNAL OF WORLD TRADE 241, 242 (2003). The same author also has called for a “Global Compact” that would “integrate universally recognized human rights into the law and practice of intergovernmental organizations”, including the IMF and the MDBs. See Ernst-Ulrich Petersmann, *Time for a United Nations ‘Global Compact’ for Integrating Human Rights into the Law of Worldwide Organizations: Lessons from European Integration*, 13 EUROPEAN JOURNAL OF INTERNATIONAL LAW 621 (2002).

⁸⁴ For an examination of this idea, and its application to other areas beyond environmental protection, see Marco C. E. J. Bronckers, *More Power to the WTO?*, 4 JOURNAL OF INTERNATIONAL ECONOMIC LAW 41, 57–65 (2001). A similar idea is to “build[] labor rights, environmental protection, and social standards into trade accords”. See Jay Mazur, *Labor’s New Internationalism*, 79 FOREIGN AFFAIRS, Jan.–Feb. 2000, at 79, 80. However, I question whether the actual protections themselves should appear as substantive provisions of the trade treaties. Instead, they would better be developed—as they have been up to now—in separate instruments.

A first step in this direction, of course, is to strengthen the enforceability, and to broaden the acceptance, of the pertinent environmental and human rights treaties themselves.⁸⁵ Although there is a fairly extensive set of such treaties already, many of them lack effective enforcement mechanisms (most of them rely mainly on reporting procedures meant to shame non-complying parties into compliance). Moreover, some countries—most notably the USA—have so far not seen fit to enter into several of them.

In addition, there is little indication among *developing* countries that further advances either in human rights or in environmental protection will be welcome or forthcoming. As for human rights, the support of US President Bill Clinton for a major anti-child-labor convention in December 1999 (in the midst of demonstrations calling, among other things, for better protection of workers' rights), and his call for an eventual linkage between trade sanctions and core labor rights, received a cool reception not only among developing countries (the proposed linkage reportedly enraged many representatives from LDCs) but also from the European Union. More worrisome yet were the comments made in 1997 by Mahathir bin Mohamad, then Prime Minister of Malaysia, when he urged the UN to mark the fiftieth anniversary of the Universal Declaration of Human Rights by revising or, better, repealing it because its human rights norms focus excessively on individual rights while neglecting the rights of society and the common good.

Notwithstanding these forces of resistance, I believe a stronger link must be put in place between the legal obligations relating to trade liberalization, environmental protection, and human rights. Doing so would not be a novel idea. Indeed, a legal basis for a linkage between trade liberalization and environmental protection already exists in the WTO Charter itself, which explicitly recognizes in its preamble that improving economic conditions through trade liberalization should be achieved “while allowing for the optimal use of the world’s resources in accordance with the objective of sustainable development, seeking both to protect and preserve the environment and to enhance the means for doing so”. Likewise, the Ministerial Decision on Trade and Environment issued at the conclusion of the Uruguay Round reiterated the views expressed in that clause of the WTO Charter’s preamble by noting that “there should not be, nor need [there] be, any policy contradiction between upholding and safeguarding

⁸⁵ Amendments to some Uruguay Round trade treaties might also be needed. For a proposal that the Agreement on the Application of Sanitary and Phytosanitary Measures be “revised to more carefully articulate what the precautionary principle is” in order to address the dispute that has raged in recent years over genetically modified organisms (GMOs), see Kevin C. Kennedy, *Implications for Global Governance: Why Multilateralism Matters in Resolving Trade-Environment Disputes*, 7 WIDENER LAW SYMPOSIUM JOURNAL 31, 62 (2001).

an open, non-discriminatory and equitable multilateral trading system on the one hand, and acting for the protection of the environment, and the promotion of sustainable development on the other". Chapter Six provides details about how a more appropriate linkage can be made between trade, environment, and human rights.

B. IMF and MDB Conditionality

Like the WTO, the IMF and the MDBs are widely criticized for encroaching on the sovereignty of their member countries. Typically this criticism focuses on the conditionality that the IMF and the MDBs impose on the loans they make.⁸⁶ Observers voicing this criticism typically invoke a cluster of related doctrines that international lawyers are familiar with but are hard-pressed to define satisfactorily. These include the doctrine of sovereignty itself as well as the principles of self-determination, non-interference, and anti-colonialism. Most of these doctrines or principles have their foundations in treaties and other international legal instruments. Critics of the IMF and the MDBs stand on those foundations to condemn the institutions for interfering in the affairs of their borrowing member countries.

I find this criticism of the IMF and the MDBs unpersuasive. Three main reasons lead me to this conclusion.

First, no state is under a legal obligation to accept the conditions of a loan from the IMF or from any of the MDBs, for the simple reason that a state is under no legal obligation to seek such a loan in the first place—or, for that matter, to join the IMF or the World Bank or any of the regional MDBs. While it is true that an approval of IMF financing in particular often triggers other official and private-sector financing for a country, and conversely that a country might be hard-pressed to obtain the financing it wants if it were to not accept the IMF financing (and hence the conditions that financing carries), it is also true that if a government is dead-set against adopting the economic and financial policies prescribed by the IMF, that government can reject them by rejecting IMF involvement. Proposals to do just that have emerged recently in some countries, including (1) Indonesia, where various NGOs have urged the government to cut off relations with the IMF and some other international organizations on grounds that “those international institutions could only exacerbate the plight of the Indonesian economy”, and (2) Venezuela, where President Hugo Chavez recently asserted that his country will leave the IMF and the World Bank, which he considers under the thumb of what he calls “the empire”.

⁸⁶ For citations to examples in the literature of some criticisms along these lines, see section I of the Appendix to Chapter Two. The practice of conditionality is described

Second, to the extent that this “trampling of sovereignty” criticism relies on the principle of self-determination—by claiming that the IMF or the MDBs interfere with a right of people within a borrowing member country to “freely determine their political status and freely pursue their economic, social and cultural development” (quoting from the International Covenant on Civil and Political Rights, a treaty accepted by nearly all countries in the world)—then the criticism rests on a misperception of that norm. Even if the principle of self-determination amounts to something more than just a slogan,⁸⁷ it surely cannot mean that a government can, simply on demand, be granted a loan in support of economic and financial policies that the IMF considers counterproductive, or in support of a development project that an MDB regards as ill-conceived or wasteful. And this is especially true if the government making the demand has not emerged from what has been referred to as “internal” self-determination⁸⁸ involving free and meaningful elections in which the affected population can have a say in the selection of policies and policy makers.

Third, to the extent that the “trampling of sovereignty” criticism rests on some purported “right to development”, then (again) the criticism rests on a legal misperception. International law contains no generally accepted “right to development *assistance*” under which a country is legally entitled to receive financial assistance from another country or from an international financial institution owned by (itself and) other countries. Notwithstanding efforts made in the 1970s to create a new international economic order—efforts that resulted in some UN General Assembly resolutions rejected by many of the world’s most powerful countries—it seems that as a legal matter the only affirmative international obligation clearly binding on an individual state in this regard is the one stated in Article 56 of the UN Charter, in which all UN members “pledge themselves to take joint and separate action in co-operation with the [UN] Organization for the achievement of the purposes set forth in Article 55”—which in turn asserts that “the United Nations shall promote” such things as higher stan-

above in Chapter Three. The WTO practices no conditionality, of course, because the WTO makes no loans. As a result, the “encroachment of sovereignty” criticism takes on additional significance in the case of the IMF and the MDBs.

⁸⁷ For a brief analysis of the principle of self-determination, and the suggestion that it either amounts to a slogan or to a subsidiary principle that takes back seat to a more fundamental principle of international peace and security, see John W. Head, *Selling Hong Kong to China: What Happened to the Right of Self-Determination?*, 46 UNIVERSITY OF KANSAS LAW REVIEW 283, 283, 301–304 (1998).

⁸⁸ See *id.* at 289 (capsulizing the concept of “internal” self-determination as “the right of the ‘holders’ [of the right of self-determination] to choose freely the form of government under which they shall live”).

dards of living and conditions of economic and international cooperation, and solutions of international economic problems. These are remarkably weak formulations—too weak to support serious obligations.⁸⁹

Consequently, preferential economic treatment for LDCs does not rest on a purported “right to development” but instead has emerged exclusively from particular circumstances specially negotiated. Such negotiations resulted, for example, in (1) the Generalized System of Preferences, to provide lower tariffs on goods from LDCs (discussed above in Chapter Three), and (2) special application of new rules adopted in the Uruguay Round of trade negotiations.⁹⁰ Indeed, the establishment of the IDA (the World Bank’s soft loan entity), and of “soft loan” authority for each of the regional MDBs (thereby authorizing those institutions to make long-maturity loans at zero or near-zero interest rates), represents a massive transfer of resources from developed countries to LDCs—amounting in a recent year, for example, to roughly US\$12 billion in loan commitments—in partial response to the calls for special economic treatment for countries with low per capita income and high per capita debt.

In short, I find the appeals to sovereignty weak in this context. Certain elements of the “trampling of sovereignty” criticism—those that complain about the content of IMF and MDB conditionality practices or that raise the question of “mission creep” that those institutions allegedly engage

⁸⁹ Given the weakness of the Article 56 obligation, the international law scholar, Antonio Cassese, has concluded that it imposes only a “generic duty” to cooperate. Antonio Cassese, *INTERNATIONAL LAW IN A DIVIDED WORLD* 151 (1986). In particular, he has noted that “the kind of co-operation urged by some developing countries—one-way assistance and economic aid . . . —is . . . precisely [the] kind of co-operation which developed countries . . . are reluctant to engage in for chiefly economic reasons”; and this reluctance “is responsible for the striking weakness of the principle” of cooperation. *Id.* Apparently he takes an even dimmer view now of the purported “duty” of cooperation; the most recent edition of his book, updating the one from two decades ago, omits the discussion of any such “duty” altogether. And as for a purported “right to development”, Cassese concludes that all the efforts of the 1970s and 1980s by LDCs in that direction “have ended up in relative failure”. Antonio Cassese, *INTERNATIONAL LAW* 508 (2d ed. 2005). See also Ignaz Seidl-Hohenveldern, *INTERNATIONAL ECONOMIC LAW* 5–6 (3d ed. 1999) (asserting that as a general rule “there does not exist any right to development in the legal sense”). Another prominent authority on international law suggests that there might exist “a legal duty . . . to provide economic aid to underdeveloped countries”. Ian Brownlie, *PRINCIPLES OF PUBLIC INTERNATIONAL LAW* 258 (5th ed. 1998). He describes this obligation, however (if it exists), not as an individual duty of a state but rather as “a collective duty of [UN] member states to take responsible action to create reasonable living standards both for their own people and for those of other states”. *Id.* at 256.

⁹⁰ For a synopsis of the “special and differential treatment” provisions included in various Uruguay Round trade agreements, see Raj Bhala, *INTERNATIONAL TRADE LAW* 1429–1438 (2001).

in—are worthy of serious attention as separate issues, and I have given them that attention elsewhere in these pages, and particularly in Chapter Five. Standing alone, however, the claim that IMF or MDB operations infringe on sovereignty packs no serious punch.

V. SUMMARY: EVALUATING THE CRITICISMS OF GEO POLICIES AND OPERATIONS

This chapter has covered a lot of ground. Here, in a bullet-point format, is a summary of my observations regarding the criticisms that have been leveled at the policies and operations of the GEOs. In each case, I first restate the “nutshell” form of each “cluster” of criticisms and then give a synopsis (simplified in several cases for purposes of brevity) of the views discussed in the preceding pages. (For each of the criticisms that I endorse, I shall offer recommendations in Chapter Six.)

Criticism “Cluster” A—Bad Policies, Projects, and Performance

The complaint: “All the GEOs promote a faulty and destructive policy in encouraging *laissez-faire* policies, including especially an ideology of trade liberalization; and the MDBs and the IMF in particular prescribe policies (in the so-called (Washington Consensus’) that do more harm than good. Moreover, the MDBs promote flawed policies and projects, provide the wrong sort of financing, and have incompetent management and staff”.

My observations:

- *Free trade.* I reject the claim that free trade *per se* is a harmful ideology. Naturally, I also reject the corollary to that claim—that the GEOs should be shut down, or forced to abandon that free trade ideology, in order to prevent them from operating in ways that reflect such an ideology. What I do *not* reject, however, are certain related claims that have to do (1) with the special circumstances of countries having tiny populations or extraordinarily limited natural resources and (2) with distributional and social injustices that often accompany free trade (see below under Criticism “Cluster” B).
- *IMF operations.* I also dismiss the “bad medicine” criticism as it has been leveled at the IMF. I have seen no persuasive evidence, based on recent data, that IMF “medicine”, when actually taken as prescribed, has generally made its borrowing member countries worse off than they would have been without the IMF’s involvement—which, it must be remembered, includes infusions of funds as well as policy prescriptions.

Moreover, the very large infusions of such funds in Asia and elsewhere cannot, I believe, be fairly seen as having created as much moral hazard as many critics would have us think. And, in any event, the “bad medicine” criticism is anachronistic because the IMF has changed course in important ways in the past few years. Having said that, there is room for improvement; after all, strong arguments can be made in retrospect that particular forms or amounts of IMF intervention were wrong for the circumstances because they hurt rather than helped a particular country’s economic condition, at least in the short term.

- *MDB operations.* I reject two of the three elements of the claim that the MDBs are plagued with bad policies, priorities, and performance.
 - First, I find the “flawed projects and policies” criticism in general to be unpersuasive, because (1) I consider it entirely appropriate for the MDBs to conditionalize their financial assistance on the requirement that borrowing member countries adopt market-based policies (including adequate regulatory regimes required to make such a system work effectively) and (2) claims that most MDB-financed projects work to the long-term detriment of borrowers are unfounded and widely contradicted. However, the fact that some MDB-financed projects have indeed failed to bring the intended benefits underscores the importance of careful project appraisal and design.
 - Second, I reject the “wrong form of financial assistance” criticism. The MDBs should not abandon their lending operations in favor of purely grant making, because MDB loans (1) facilitate public works unattractive to private lenders, (2) attract commercial co-financing, (3) supply necessary reflows of funds, and (4) provide special services to low-income countries with thin experience in international finance. That said, I agree that the level of grant financing made available by the MDBs should be increased, along with their “soft loan” resources and lending.
 - Third, I do agree that current inadequacies in MDB management and staffing need to be addressed and overcome. These inadequacies include excessive influence (“overweighting”) of nationality as a factor in staff appointments and promotion; inordinate emphasis on loan volume, rather than on loan quality, in promotions and other rewards; “policy anachronism” on the part of some senior staff members who do not give adequate attention to envi-

ronmental and social dimensions of development; and lack of internal accountability. In addition, there is an overriding need to correct the severe understaffing in most of the MDBs, in order to improve performance, morale, and capacity to meet the ever-greater responsibilities placed on the MDBs by their member countries.

Criticism “Cluster” B—Distributional and Social Injustice

The complaint: “Even if (despite the criticisms in “Cluster A”) the policies and projects that emerge from the GEOs’ operations do in fact bring *aggregate* benefits to national and regional economies, those benefits are distributed in ways that are deeply inequitable and that ignore key social aspects of development. Expressed differently, the GEOs’ operations create too many ‘losers’ for us to accept”.

My observations:

- *Benefits from free trade—the national level.* It is surely beyond question that trade liberalization, as pursued by the WTO, creates some winners and some losers within a national economic system. While this is troubling, it does not constitute a grounds for squelching efforts toward trade liberalization. Instead, national governments must take adequate steps to ensure that some of the gains that the economy enjoys as a whole are shared with those few segments of the economy who lose out from free trade.
- *Benefits from free trade—the global level.* It is not at all clear that free trade, and economic globalization more generally, has increased the income gap between the rich countries and the poor countries of the world. But even if it does, the question is whether absolute poverty generally is on the decline, at least in countries that have globalized. It probably is, so we should not stifle free trade merely out of a concern that free trade is improving economic conditions faster in the rich countries. Instead, we should (1) expand the rules and processes by which the LDCs gain from free trade and (2) ensure that the rich countries abide by the rules themselves.
- *IMF social policies.* It is a mistake to assert that the IMF forces countries to adopt financial policies that hurt the poor or ignore social values. IMF policies typically run in the other direction, calling for strong social safety nets. But more should be done; the IMF should place more pressure on borrowing governments to implement IMF prescriptions for economic

discipline in a way that provides protections for disadvantaged and less powerful in society.

- *MDBs and human rights.* It is absurd to assert that the MDBs completely disregard human rights; these institutions do in fact incorporate human rights considerations in the project design and appraisal process. But more should be done, including the creation of stronger linkage between MDB charters and key human rights treaties. Why? Because the MDBs have the resources and leverage to influence the behavior of national governments in this respect.

Criticism “Cluster” C—Environmental Degradation

The complaint: “A particularly troubling and dangerous consequence of GEO operations is that they disregard the overriding need to protect the physical environment that we all share. This is especially true of (1) the MDBs, whose projects often have devastating environmental effects, and (2) the WTO, which causes a ‘race to the bottom’ in national environmental regulations”.

My observations:

- *MDB-financed projects.* Some criticisms of the MDBs—claims, for example, that those institutions ignore the environmental consequences of the projects they finance—are out of date. The MDBs have devoted enormous levels of attention and resources to environmental matters in recent years. But more should be done, especially to improve the actual implementation (as distinct from the design) of MDB-financed projects. Moreover, as in the area of human rights, stronger linkages should be created between MDB charters and key environmental protection treaties.
- *Race to the bottom?* There is no consensus on the question of whether free-trade policies (as promoted by the WTO) encourage any sort of “race to the bottom” that undermines efforts of environmental protection. But even if they do, the answer to this is not to stifle the free-trade policies themselves, but rather to eliminate free externalities—that is, to eliminate the possibility of businesses using public resources in their operations without paying for those resources—especially by strengthening multilateral environmental regulations and their enforcement.

Criticism “Cluster” D—Encroachments on Sovereignty

The complaint: “In imposing conditionality on their loans, the IMF and the MDBs trample on national sovereignty, and particularly on the principle of self-determination. And the WTO does the same when it prohibits countries from enforcing national rules aimed at protecting national social and economic values”.

My observations:

- *WTO and free-trade concepts.* The ability of countries to enforce their own high standards for environmental protection and labor practices has been undercut by an unfortunate interpretation of “free trade”. What David Driesen calls the “non-discrimination concept” of free trade should be adopted, thereby providing more leeway to national governments to implement (without discrimination) social protections as they see fit. In addition, the relationship between GATT rules and environmental treaties and human rights treaties should be strengthened in ways that would both permit and require protections of these interests at the national level.
- *IMF and MDB conditionality.* There is little bite to the claim that the conditionality practices of the IMF and the MDBs encroach on the sovereignty of their member countries. As a practical matter, a country objecting to the content of such conditionality can avoid it by declining a loan or even, in an extreme case, by dropping its membership in the IMF or the MDB at issue. Moreover, the principle of self-determination provides no basis for the “encroachment of sovereignty” criticism; whatever that principle may mean, it surely cannot mean that a government can, simply on demand, be granted a loan for a particular project or set of policies. Furthermore, international law contains no generally accepted “right to development assistance” under which a country is legally entitled to receive financial assistance from an international financial institution.

Battles over the GEOs' Character, Control, and Reach

In Chapter Four we began the effort to evaluate the criticisms that have been leveled at the global economic organizations (GEOs)—as those criticisms were identified in a “bare-bones” manner in Chapter Two—against the backdrop of reality. By “reality” I mean the way the GEOs actually operate, as explained in Chapter Three. Recall that one of the reasons I offered at the beginning of this book for saying that we are “losing the Global Development War” is that valid criticisms of the GEOs are obscured by invalid criticisms and that policy decisions about how to address economic problems of a global character are therefore being influenced inappropriately. In order to prevent that from happening, and therefore to stop losing the Global Development War simply through ineptitude and mistake, we need to separate the wheat from the chaff.

In this chapter, I wish to continue that process by examining the last four of the eight “clusters” of criticisms directed at the GEOs. The first four “clusters”, discussed in Chapter Four, focused mainly on issues of “policies and operations”. By contrast, the four “clusters” of criticisms covered in this chapter are the “character, control, and reach” criticisms that raise institutional and governance issues. They include (1) the transparency (or opacity) of the GEOs, (2) the degree of accountability (if any) that the GEOs have in respect of “outsiders” (and whether such “outsiders” can adequately influence decision making within the GEOs), (3) the faithfulness of the GEOs to their governing charters, and (4) the fairness of their governance structures in general.

I. SECRECY AND OPAQUENESS

This criticism, as I capsulized it in Chapter Two, claims that “all of the GEOs are closed, non-transparent organizations that (despite the insistence by some of them on transparency in the governance of their member states) practice both documentary secretiveness and operational secretiveness—thereby remaining inappropriately hidden from scrutiny and insulated from external criticism”. Recall that examples of this criticism in the literature can be found in the Appendix to Chapter Two (see in particular the items summarized there under Criticisms I-4, II-7, and III-5, con-

centrating on the IMF, the multilateral development banks (MDBs), and the WTO, respectively).

Does this complaint hold water? The answer, in my view, is “it depends”. When we are looking at the IMF, the “secrecy and opaqueness” complaint does not pack much punch; but when we are looking at the MDBs and the WTO, the complaint does in fact make sense. Let us start with the IMF.

A. The Illumination of the IMF

As applied to the IMF, the “secrecy and opaqueness” complaint claims that the IMF is a secretive organization in several respects. For one thing, it is said to practice “documentary secretiveness”: the institution typically does not disclose documents that describe its governing policies, its decisions, and its plans—that is, how it does things, what it has done, and what it plans to do. Moreover, the documents that the IMF does disclose under its selective disclosure policies are usually (according to this criticism) self-serving and biased, simply whitewashing over any negative aspects of its operations; and those disclosure policies often result only in the release of documents that are distracting or deceptive in character, intended to keep the public occupied with largely irrelevant information. Furthermore (the criticism continues), in some cases, the IMF allows the member countries themselves to determine whether certain documents relating to those countries will be made public, and this represents an abdication of responsibility by the IMF.

In addition to these forms of “documentary secretiveness”, the IMF also practices (according to many of its critics) “operational secretiveness”. That is, it conducts business in closed meetings that exclude the public from observing the IMF in action. Indeed, many key decisions are made through informal “insider” meetings that are off limits both to public scrutiny and to the formalities to which public meetings are usually subject in order to ensure procedural fairness.

Taken together, these two types of secretiveness are said to make the IMF opaque to the rest of the world, except perhaps to the few government officials in finance ministries or central banks with whom the IMF has its formal contacts. In maintaining this opaqueness, the IMF is (according to the critics) profoundly hypocritical, given the fact that the IMF demands openness and transparency from its borrowing member countries in terms of economic information and policies.

The IMF has already responded to this criticism. Over about the past decade, the IMF has undertaken an impressive campaign to provide more information on its operations. Recall from the “nutshell” account of the

IMF that I gave in Chapter Three that the IMF holds annual “Article IV consultations” with each of its member countries regarding economic and financial developments, problems, and policies. Copies of nearly all Article IV reports and summaries are now made available—a practice that would have been extremely rare when I worked on the legal staff of the IMF in the late 1980s. Likewise, the letters of intent and associated documentation relating to stand-by arrangements and other IMF lending operations also are now made public. (Indeed, according to a recent entry on the IMF’s Web site, “95 percent of members now choose to release their letters of intent for request for [and] reviews of the use of Fund resources”.) Similarly, three-quarters of all stand-alone reports on IMF-supported programs were published in the half-decade starting in 2001, with the pace of those releases increasing over time. The IMF now posts information on its Web site about each member’s financial position with the IMF, quarterly IMF financial statements, and other information about administrative and operational aspects of the IMF.

I find these responses satisfactory. That is, I believe the IMF now provides adequate information to permit interested parties to know enough about IMF operations to evaluate and criticize those operations. No doubt some further improvements in IMF transparency are warranted and will be made in coming years as continued pressure—pressure of the same type that has brought change in the IMF thus far—is applied to all public international institutions. But, for now, I largely dismiss the “secrecy and opaqueness” criticism as it applies to the IMF.

But wait. What about the “operational secrecy” issue? The initiatives I have alluded to above address the “documentary secrecy” issue but do not relate directly to the complaint that the IMF operates behind closed doors and that many key decisions are therefore made through informal “insider” meetings that are off limits both to public scrutiny and to the formalities to which public meetings are usually subject in order to ensure procedural fairness.

Frankly, this bothers me very little, for two related reasons. First, discussions on sensitive matters of international finance need to be confidential enough to allow the participants to be frank and to avoid roiling financial markets around the world. Second, such discussions, and the decisions they ultimately lead to, need to be handled by professionals, without distraction by non-experts. Just as I do not want my neighbor’s sixteen-year-old son to take a break from his motorbike racing and sit in on the regular policy meetings of the US Federal Reserve Board, at which interest rates are set, likewise I do not want non-experts to be directly involved in policy discussions and decisions of the IMF.

I realize that reasonable people will disagree with my view on this point, so let me explore it further. I shall do so by drawing a distinction between the IMF and the MDBs. As I shall explain in the next subsection, I draw a somewhat different conclusion regarding the IMF from the conclusion I draw regarding the MDBs—institutions that I believe *should* do more than they have done to facilitate public understanding of how they operate and what they plan to do. This difference in my views on the IMF versus my views on those other institutions partly reflects differences in the character of the information at issue. In the case of the MDBs, whose main business is to help propose, design, and finance specific projects in the territories of member countries, both “operational secretiveness” and “documentary secretiveness” are highly objectionable because they restrict input by members of the public who could be directly affected by, and who could offer the MDBs knowledgeable and helpful views on, the proposed projects. In the case of IMF, however, which operates at the policy level—designing not physical projects but rather programs of economic and financial policy that it urges a member country to implement—there is less scope for helpful input from the general public into the deliberations of the IMF itself and relatively more need for input from the general public into the policy decisions of their own national governments.

The essence of this difference might be captured in what I shall call the “input-information ratio”: the greater the potential value and importance of the public’s input into the operations of an international institution, the greater should be the volume and detail of the information made available about those operations. In my view, the recent increase in IMF transparency (regarding its own operations, that is), creates an “input-information ratio” for the IMF that is adequate.

The same is not true about the transparency of the many national governments. I hasten to add this point because the term “transparency” has been used both (1) in referring to the openness of the IMF itself and (2) in referring to the openness of its member governments regarding their own operations. (For example, a document appearing on the IMF’s Web site expressly refers to transparency efforts as involving both “[g]reater openness and clarity by the IMF about its own policies and the advice it provides to members” and “[g]reater openness on the part of member countries”.) In my view, there is far too little of the latter—openness of national governments regarding their own operations. This point appears in several observations I make later in this chapter and (especially) in Chapter Six.

B. The MDBs and the Momentum Toward Openness

Critics who level the “secrecy and opaqueness” criticism at the MDBs complain that those institutions practice both “documentary secretiveness”

and “operational secrecy”. This is the same complaint as when the “secrecy and opaqueness” criticism is directed against the IMF, as discussed in the preceding subsection.¹

Does the complaint make sense in this context? I believe it does. As noted above, I believe the MDBs, unlike the IMF, still fall short in providing certain types of transparency.

In explaining my views, I wish to start by noting what is *incorrect* about the “secrecy and opaqueness” complaint when leveled at the MDBs. There is much chaff among the wheat. For example, those who complain that the MDBs operate entirely behind a veil of secrecy are simply wrong. In the past few years, these institutions have officially adopted and implemented document disclosure policies that make vastly more information available about the MDBs now than even a decade ago. For example, detailed reports issued by the Asian Development Bank (AsDB) president to the AsDB Board of Directors regarding loan proposals—explaining a project’s components and environmental impact, for example, and enumerating the specific conditionalities accepted by a borrower—would have been almost impossible to obtain a few years ago without inside access to the AsDB. Now they can be obtained through the AsDB’s Web site.

In short, there is great momentum toward transparency in the MDBs. However, more should be done to facilitate public understanding of how the MDBs operate, what they have done, and what they plan to do. In this respect, the same types of “open meetings” principles adopted in many countries for the conduct of public business should be adopted within the MDBs. Records of meetings of the MDBs’ governing boards should, as a general rule, be made publicly available, with exceptions and safeguards as necessary to guard against disclosure of information that is legitimately confidential. Loan agreements should be more easily available in electronic form. All legal opinions issued by the general counsels of the MDBs should be publicly available, also in electronic form. Further details in this regard appear below in section I of Chapter Six.

C. The WTO—A Different Momentum Toward Openness

The “secrecy and opaqueness” complaint applies to the WTO in essentially the same manner as it applies to the IMF and the MDBs, as discussed above. The complaint alleges that the WTO is a closed, non-transparent

¹ It is important to note the rather subtle difference between (1) this “secrecy and opaqueness” complaint, as directed against either the IMF or the MDBs, and (2) the complaint that the public has inadequate influence over IMF and MDB decisions. The latter of these falls more within the “democracy deficit” cluster of complaints and will be discussed in section II of this chapter.

organization that operates in secret, inappropriately hidden from scrutiny and hence insulated from external criticism. The advocates of this criticism portray the WTO as a faceless bureaucracy that holds secret meetings for clandestine purposes and decides trade cases behind closed doors.

This criticism is certainly not valid when stated in its most extreme terms, because the WTO has in recent years taken several steps that its critics have demanded. A visit to the WTO Web site (<http://www.wto.org>) shows thousands of WTO documents available to the public and a range of information about how non-governmental organizations (NGOs) may get those documents, contact the WTO, and participate in symposia and other meetings organized by the WTO.

In this respect, then, the WTO has taken some of the same steps that the IMF and the MDBs have taken in the past few years—adopting a transparency or disclosure policy, making publicly available a wide range of documents on policy and operational matters, and inviting formal and informal contacts with NGOs. There is, in other words, momentum toward transparency. It might be regarded as a different sort of momentum in terms of timing, because the WTO is much newer an institution than the IMF, the World Bank, and most of the regional MDBs. It is not surprising that in the WTO's early years a certain amount of policy making and institution building would occur on a rather informal, *ad hoc* basis, difficult to subject to formal methods of transparent operation. At the same time, the fact that the WTO is a much more recently created institution means that the WTO and its managers carry out their responsibilities conscious of the modern expectations of such institutions—that is, in the larger context of international institutions whose operations are now expected to be subject to broad public scrutiny. Hence, my observation that the WTO has a somewhat different sort of momentum toward transparency.

However, as I suggested regarding the MDBs (but not the IMF), even more should be done to facilitate public understanding of what the WTO is, how it operates, and why it reaches the decisions it does. In this respect, the same types of “open meeting” principles adopted in many countries for the conduct of public business should be adopted by the WTO. Records of meetings of the various WTO organs, for example, should as a general rule be made publicly available, with exceptions and safeguards to protect against the disclosure of information that is legitimately confidential. Legal opinions should likewise be made publicly available. Further details in this regard appear below in section III of Chapter Six.

II. THE DEMOCRACY DEFICIT

In moving now from matters of transparency to matters of “democracy”, we venture into deep and dangerous waters. Relatively speaking, it is

child's play to make the GEOs less secret and more transparent. It is much harder to address what many critics have called the "democracy deficit" under which all of the GEOs are said to labor.

As summarized in Chapter Two, this cluster of criticisms claims that because they are controlled "by a handful of rich countries, the IMF and all of the MDBs are unaccountable autocracies in which the people most affected by their operations have far too little chance to participate or exert influence. The WTO is also undemocratic in that it excludes participation by citizens and in that it has no allegiance to political authorities and can therefore impose its will arbitrarily on its member countries. Moreover, the governments of many GEO member countries are themselves undemocratic, so there is no guarantee (and often little likelihood) that those governments will reflect the views of their constituents."

Recall that examples of this criticism in the literature can be found in the Appendix to Chapter Two (see in particular the items summarized there under Criticisms I-5, II-8, and III-6, concentrating on the IMF, the MDBs, and the WTO, respectively).

As before, let us examine this criticism on an institution-by-institution basis, in order to see how it applies both differently and similarly with respect to the IMF, the MDBs, and the WTO. As will be seen, this "democracy deficit" complaint is the one that I endorse most emphatically in respect of all of the GEOs (along with the "distributional and social injustice" complaint discussed in Chapter Four) and that I believe warrants especially urgent attention.

A. The IMF: Voting, Structure, Authority, and Leadership

According to many critics, evidence of a "democracy deficit" in the IMF is found in many features of the institution, including:

- in the weighted voting system, which places a preponderance of power in the hands of a small cluster of countries (none of which borrows from the IMF);
- in the IMF Charter provision that empowers the institution itself to determine the legality of its own actions;
- in the absence of any genuinely independent tribunal or other panel in which IMF action can be challenged;
- in the practice by which the IMF's Managing Director is selected in a non-transparent manner and is always a European; and
- in the difficulty or impossibility of any participation in decision making by NGOs, purported beneficiaries, or any other groups

outside the official government service. (As noted above, this last feature is related also to the “secrecy and opaqueness” complaint discussed in the preceding section.)

Another point related to the “IMF democracy deficit” criticism looks beyond the IMF itself to its member countries, many of which are themselves undemocratic in character. Critics point out that for those countries, there is no guarantee (and often little likelihood) that a government’s participation in IMF decision making will in fact reflect the views of the country’s people, including in particular those persons most directly affected by those IMF decisions.

In my view, many elements of the “IMF democracy deficit” complaint do in fact have validity and warrant attention. Some of the most insightful observations in this regard come from Professor Daniel Bradlow of American University. I would emphasize two specific points he makes about how the structure and management of the IMF contribute to a democracy deficit in that institution. First, Professor Bradlow draws an important distinction between two groups of IMF member states: “IMF supplier states” and “IMF consumer states”.² The IMF supplier states are (Bradlow explains) “those countries which, because of their wealth, their access to alternative sources of funds, and for political reasons, have no intention of using the IMF’s services in the foreseeable future, and so do not need to pay particular attention to the views of the IMF”, whereas the IMF consumer states are those “that need or know they may need IMF financing in the foreseeable future” and therefore “must pay careful attention to the views of the IMF because these views will influence the conditions the IMF will attach to the funds it disburses”.

The fact that this distinction exists between IMF supplier states and IMF consumer states, and that the latter need to listen to the IMF and the former do not, would not in itself make the IMF unaccountable or undemocratic but for another fact: the IMF supplier states dominate decision making in the IMF, and their domination has in fact increased over the years. In explaining the source and growth of this domination, Professor Bradlow emphasizes these factors:

² Daniel D. Bradlow, *Rapidly Changing Functions and Slowly Evolving Structures: The Troubling Case of the IMF*, 94 AMERICAN SOCIETY OF INTERNATIONAL LAW PROCEEDINGS 152, 153 (2000) [hereinafter Bradlow-2000]. Professor Bradlow sounds many of the same themes in another article. See generally Daniel D. Bradlow, *Stuffing New Wine Into Old Bottles: The Troubling Case of the IMF*, 3 JOURNAL OF INTERNATIONAL BANKING REGULATION 9 (2001).

- The number of IMF Executive Directors has grown more slowly than the number of IMF member states, resulting in an increase in the number of “consumer states” that must be represented by shared Executive Directors, and thus diluting (in relative terms) the effective voice of those countries relative to the “supplier states”, several of which have their own unshared Executive Director;
- Those shared Executive Directors who represent both consumer states and supplier states are always from supplier states, so that eleven of the IMF’s twenty-four Executive Directors are from industrialized countries; and
- The permanency of supplier state representation on the Executive Board gives those states negotiating and agenda-setting advantages.³

Underlying these specific factors, of course, concerning how IMF supplier states dominate decision making in the IMF is the feature that we examined in Chapter Three: the weighted voting system, which gives the G-7 countries control over nearly 45 percent of the voting power in the organization. Professor Bradlow points out the pernicious result of this confluence of factors:

The result is that, de facto, the G-7 countries control the policy agenda in the IMF even though they do not have to live with the consequences of the policies they make for the IMF’s operations. This means that they make policy that is only of limited interest to their own citizens. The policy is, of course, of immense interest to people in developing countries who have no ability to hold the G-7 countries accountable for their decisions or actions. This situation of decision makers having power with accountability to people who do not have to live with the consequences of their decisions but without accountability to those most affected by their decisions is a situation ripe with potential for abuse.⁴

This form of unaccountability, emanating from voting-and-control aspects of the IMF’s structure, also bears importantly on the “asymmetry in obligations” criticism discussed in the last section of this chapter.

Professor Bradlow also explains other forms of unaccountability in IMF operations. For one thing, he says, the IMF “has not established any mechanism through which the citizens of its consuming countries can hold the

³ Bradlow-2000, *supra* note 2, at 154.

⁴ *Id.* at 155.

IMF or its management accountable for their actions as decision makers” in helping develop policies in those countries.⁵ If part of the IMF’s insistence on good governance requires its borrowing member countries to make their own policy makers accountable for their actions, Bradlow reasons, there is “no obvious reason why the IMF, when it ‘descends’ into the national policy-making process, should be less accountable to those people affected by its decisions than [are] other actors in this process”. But such accountability is almost totally lacking for two related reasons: (1) “the IMF does not have a set of publicly available operating rules and procedures” and (2) even if there were some established standards against which to challenge IMF operations, there is no effective process or entity through which such a challenge could be mounted. (The Executive Board, Bradlow says, would theoretically be an appropriate forum for challenging the actions of the IMF’s management, but it is unrepresentative for reasons discussed above; and the Board of Governors would be neither an appropriate nor an effective forum at which to raise such a challenge.)

It is worth noting that the IMF has taken some important steps recently in addressing this particular aspect of the “democracy deficit” criticism. Two stand out.

First, an Independent Evaluation Office (IEO) was established in July 2001 (after Professor Bradlow’s views, excerpted above, were published) in order “to conduct objective and independent assessments of issues of relevance to the mandate of the IMF”.⁶ The IEO has already undertaken several evaluation projects, including assessments of (1) the IMF’s role in the economic crises in Brazil, Indonesia, and Korea, (2) the IMF’s role in Argentina, (3) the effectiveness of the IMF’s Poverty Reduction and Growth Facility (by which it makes soft loans), (4) IMF technical assistance, and (5) the IMF’s approach to capital account liberalization. Its most recently undertaken evaluation efforts focus on IMF exchange rate policy advice

⁵ *Id.* at 156. Quoted passages appearing in the remainder of this paragraph are also drawn from pages 155 and 156 of Bradlow-2000, *supra* note 2.

⁶ IMF ANNUAL REPORT 2003. For further information about the IEO’s history, purpose, structure, and operations (including its official terms of reference), see materials available at <http://www.ieso-imf.org/about/> (last visited July 4, 2007), including IEO annual reports. For some views on the IEO, see generally four short articles by (respectively) an academic, two former IMF Executive Directors, and a senior official of the NGO Friends of the Earth: Peter B. Kenen, *Appraising the IMF’s Performance*, FINANCE & DEVELOPMENT, Sept. 2004, at 41; Karin Lissakers, *Blunt Approach Does the Trick*, *id.* at 46; Jean-Claude Milleron, *Enhancing the Learning Culture*, *id.* at 48; Carol Welch, *Credible Start, Untested Impact*, *id.* at 50. Some of the IEO’s reports have criticized IMF operations. A March 2007 report, for example, found “ambiguity and confusion” about the IMF’s policies and practices in its work in sub-Saharan Africa.

and IMF initiatives in the area of corporate governance. In 2006, the IMF's Executive Board reviewed an external assessment of the IEO itself (a so-called "evaluation of the evaluators") and decided to continue the IEO in operation with no major changes.

Although it is too early to assess the long-term impact of the IEO's work, its very creation does signal a willingness on the part of the IMF to provide increased public accountability. In its current formulation, the IEO is largely an internal organ of the IMF, given the fact that the Director of the IEO is appointed by the IMF Executive Board, may be dismissed at any time by the Executive Board, hires other IEO officers on terms and conditions determined by the Board, depends on the Executive Board for budgetary funding, and reports to the Board. Although the IEO's terms of reference call for it to "be independent of Fund management and staff"—a requirement that is given some force by (1) requiring that a majority of IEO personnel come from outside the IMF and (2) prohibiting the IEO Director from being appointed to a regular IMF staff position at the end of his or her term of office—the IEO nevertheless falls short of being an external organ broadly representative in character, empowered to exercise a fully objective review of IMF operations and to issue binding orders if it judges those operations to be improper or *ultra vires*.

A second recent IMF initiative—or, more precisely, a cluster of related initiatives—to increase the institution's accountability to the citizens of IMF consumer countries centers on the notion of "voice". In order to increase the "voice" (notwithstanding the tiny voting strengths) of many member governments in IMF deliberations—and hence presumably reducing the relative influence of the IMF's management and staff—steps were taken about eight years ago to give the International Monetary and Financial Committee broader authority (a point mentioned in the "nutshell" account of the IMF in Chapter Three), thereby providing "greater direct involvement of governments in the policy-making process within the Fund".⁷ In a similar effort to strengthen the "voice" of developing countries, the IMF's Executive Board has continued to develop the IMF's Poverty Reduction Strategy Paper (PRSP) process, introduced in 1999, by which written plans for reducing poverty are (according to a recent IMF annual report) "prepared by low-income countries through a participatory process involving domestic stakeholders and external development partners, and are endorsed by the IMF and the World Bank". As another effort to strengthen

⁷ François Gianviti, *The Reform of the International Monetary Fund (Conditionality and Surveillance)*, 34 INTERNATIONAL LAWYER 107, 115 (2000). Mr. Gianviti served as the IMF's General Counsel for many years and was in that position when I worked in the IMF legal department.

the “voice” of the most thinly represented countries, the IMF’s Executive Board is undertaking efforts to address what it calls “staffing and technological constraints of the two sub-Saharan African constituencies” on the Executive Board.

In sum, the IMF has taken some substantive steps recently that respond in part to the complaint that it is unaccountable to the citizens of IMF consumer countries. These steps, although rather modest in scope so far, are laudable.

Another form of unaccountability emerges from the IMF’s legal authority to interpret its own charter.⁸ One self-described “third-world scholar” has offered the following critical description of that authority:

[Under the pertinent provision,] an essentially legal question is decided by a non-legal body which appears to be under no obligation to decide the matter according to legal considerations. Furthermore, given that it is action by the Executive Directors that is most often in dispute, this system provides little remedy at all for the situation. In fact, the provision . . . represents a fundamental departure from the “rule of law”—a basic premise of which is that executive actions should be subject to review by an independent judicial process.⁹

⁸ Article XXIX of the IMF Charter provides that “[a]ny question of interpretation of the provisions of this Agreement . . . shall be submitted to the Executive Board for its decision” and may then, if a member country so requests, “be referred to the Board of Governors, whose decision shall be final”. As explained in the “nutshell” account of the IMF that I provided in Chapter Three, the IMF Charter was amended in the late 1960s, the mid-1970s, and the early 1990s; this provision on IMF Charter interpretation, however, has remained unchanged from the original version dating from 1944. For an early analysis of this provision, see generally Joseph Gold, *INTERPRETATION BY THE FUND* (Int’l Monetary Fund, Pamphlet Series No. 11, 1968). Sir Joseph Gold is the most famous, most prolific, and probably most influential single individual in the world in terms of international monetary law and the law of the IMF. I visited with him numerous times while I worked at the IMF; although he was retired at the time, he had an office down the hall from mine and often invited young lawyers to tea or dinner. He died a few years ago.

⁹ Antony Anghie, *Time Present and Time Past: Globalization, International Financial Institutions, and the Third World*, 32 *NEW YORK UNIVERSITY JOURNAL OF INTERNATIONAL LAW & POLICY* 243, 270–271 (2000). Although the specific provision to which Anghie refers is Article IX(a) of the charter of the International Bank for Reconstruction and Development (IBRD), that provision is virtually identical to Article XXIX of the IMF Charter, and Anghie makes it clear that he intends for his comments to apply both to the IBRD and to the IMF.

Another thoughtful, recent discussion of the “democracy deficit” comes from Dr. Ngaire Woods,¹⁰ a Fellow in Politics and International Relations at University College, Oxford (where, coincidentally, I first studied law in the 1970s). Dr. Woods examines several aspects of the problem, which she calls (probably more aptly) the “accountability deficit”, and traces it to several factors.

First, she says, the representation of member countries on the Executive Board of the IMF (and on that of the World Bank) is too unequal now, partly because of changes in members' quotas: whereas the proportion of “basic votes” to total votes in the IMF in earlier years provided some equality among the members (that proportion was 14 percent, for example, in 1955), now the “basic votes” amount to a tiny proportion (about 3 percent, according to Dr. Woods).¹¹ In a significant development—perhaps the most significant move regarding voting power in the past couple of decades—the IMF recently has taken steps toward addressing this situation: the first move in a “Medium-Term Strategy” adopted recently by the Executive Board was to increase, on an *ad hoc* basis, the quotas (and therefore voting power) of four member countries (China, Korea, Mexico, and Turkey); and the next proposed move is to increase the number of “basic votes”. This will require an amendment to the IMF Charter, a process currently under way.¹²

¹⁰ Ngaire Woods, *Making the IMF and the World Bank More Accountable*, 77 INTERNATIONAL AFFAIRS 83 (2001) [hereinafter Woods-I]. Dr. Woods is also the Director of the Global Economic Governance Programme at Oxford University and is the author of numerous other works, including *THE GLOBALIZERS: THE IMF, THE WORLD BANK AND THEIR BORROWERS* (2006). In 2006 she served on a panel of external advisors appointed by the IMF to evaluate the IMF's Independent Evaluation Office.

¹¹ Woods-I, *supra* note 10, at 87. Professor Bradlow has also emphasized the importance of this decline in the significance of “basic votes”. Bradlow-2000, *supra* note 2, at 155 (giving proportions for 1946, 1982, and 2000 as 11.3 percent, 5.6 percent, and 2.2 percent, respectively). The IMF's former secretary, Leo Van Houtven, also recently pointed out the decline in the significance of “basic votes”, which he says represent “barely 2 percent” of total votes. Leo Van Houtven, *Rethinking IMF Governance*, FINANCE & DEVELOPMENT, Sept. 2004, at 19. As explained above in the “nutshell” account that I gave of the IMF in Chapter Three, each IMF member country has an allotment of 250 basic votes plus one additional vote for each part of its quota equivalent to 100,000 SDRs.

¹² An IMF “Factsheet” issued in April 2007 (and available on the IMF Web site) reports as follows regarding the portion of the Medium-Term Strategy that relates to quotas and voting power:

The two-year package of reforms agreed to by the IMF Board of Governors at the [fall 2006] Annual Meetings in Singapore, included initial ad-hoc quota increases for four countries that are clearly underrepresented—China, Korea, Mexico, and Turkey. The package also includes more fundamental reforms—the details of which will be developed by no later than

Second, Dr. Woods says, the Executive Board does not adequately hold staff and management to account, for several reasons, including the rapid rotation of Executive Directors, their protectiveness toward the countries they represent, the tendency of the staff and management not to divulge internal disagreements to the Executive Board, and the practice of reaching decisions prior to Executive Board meetings.

Third, Dr. Woods explains that the heads of both the Bretton Woods institutions—the Managing Director of the IMF and the President of the World Bank—“are selected by a non-transparent process which excludes most member countries” because of a long-standing compromise by which “the head is appointed by convention according to the wishes of the United States (in respect of the World Bank) or western Europe (in respect of the IMF)”.¹³

A fourth element of the democracy deficit, or accountability deficit, that Dr. Woods highlights relates to the “mission creep” criticism that we shall turn to in the next section of this chapter. In that regard, she asserts that “[t]he role of the IMF and World Bank has expanded; their accountability has not”. Indeed, she says, “the IMF and the World Bank were neither created nor structured to undertake or to be accountable for such far-reaching activities”.¹⁴

I have identified in the preceding paragraphs a variety of important factors that contribute to the IMF’s “democracy deficit”. They are important enough to warrant a brief summation:

the 2008 Annual Meetings—including agreement on a new quota formula to guide the assessment of the adequacy of members’ quotas in the IMF; a second round of ad hoc quota increases based on the new formula; and work on a proposal to increase the basic votes that each member possesses together with a mechanism to keep the share of the basic votes in total voting power subsequently unchanged.

See <http://www.imf.org/external/np/exr/facts/quotas.htm> (last visited July 7, 2007).

For information on the Board of Governors resolution of April 2007 requesting work on a Charter amendment, see <http://www.imf.org/external/np/sec/pr/2006/pr06205.htm> (last visited July 7, 2007). For a summary of the IMF’s Medium-Term Strategy, see *Setting a New Course*, IMF IN FOCUS, at 7 (Sept. 2006). Some of the impetus for increasing the quotas for China and the other three most severely under-represented countries came from the Bush-Cheney administration, as explained by Daniel W. Drezner in *The New New World Order*, 86 FOREIGN AFFAIRS, Mar.–Apr. 2007, at 34, 42–43.

¹³ Woods-I, *supra* note 10, at 88.

¹⁴ *Id.* at 88, 89.

- Control over the IMF by the supplier states (G-7 countries and other industrialized countries) results in policies that the people in consumer states have no ability to influence;
- Likewise, people in consumer states have no adequate mechanism for holding the IMF itself (as distinct from the IMF's controlling states) accountable for its decisions, because the IMF has neither an adequate set of publicly available operating rules against which to challenge its actions nor an adequately independent process or entity through which a challenge could be mounted (although the IEO must be regarded as a good start in that direction);
- The power of the IMF's Executive Board to interpret the IMF Charter (and hence to judge the legality of its own actions thereunder) also prevents any formal external accountability or democratic influence;
- Representation of member countries on the IMF's Executive Board has actually become progressively more unequal in recent years because of the dilution of "basic votes" (an issue that the IMF is now addressing);
- The Executive Board is not in a position to hold IMF staff and management adequately accountable for their actions, because of (among other things) the rapid rotation of directors;
- The IMF's Managing Director is selected by a non-transparent process that excludes most member countries; and
- The effects of all these aspects of unaccountability are only aggravated by the IMF's expansion into a broader range of activities.

Given these various factors, it should come as no surprise that the "democracy deficit" criticism has been directed at the IMF. I find it generally valid. I believe that although it would be impossible to overcome all aspects of an IMF "democracy deficit" in a world composed of countries that are dramatically unequal in economic terms,¹⁵ and although we should not lose sight of the important efforts the IMF has already made (as noted above) to overcome some aspects of the "democracy deficit", much remains to be done to make the IMF itself, and the countries that control it, more accountable to all people whose lives the IMF affects—or, expressed in simple terms, to bring a much greater measure of democracy to the IMF.

¹⁵ See Gianviti, *supra* note 7, at 116 (noting "how difficult it is for a monetary institution to reconcile the principle of equality of nations under international law with the reality of their unequal economic and financial weights").

How can this be done? I believe the answer lies in expanding several existing forms of IMF accountability and inventing new ones. I outline some specific recommendations in this regard in Chapter Six. These recommendations touch on the IEO, on the International Monetary and Financial Committee, on the quota system, on the IMF's process for decision making (and selecting its leader), and on the need for dramatically more competent and accountable national governments.

B. The MDBs: More of the Same, But Worse

The “democracy deficit” criticism plays out in the case of the World Bank and the other MDBs in much the same way that it does in the case of the IMF. In certain respects, however, it has a deeper bite. Let us first explore the contours of the criticism. Stated most broadly, the “democracy deficit” complaint claims that the MDBs are bereft of any real legitimacy in today's world because they lack, as a structural or constitutional matter, any meaningful form of accountability. Within this general formulation we can find several specific elements, of which five are most important. I summarize these in the following paragraphs.

First, as a structural matter, the MDBs make no accommodation (according to the critics) for citizen involvement. That is, not only do the MDBs operate on the basis of secrecy (the “secrecy and opaqueness” criticism evaluated above), which prevents individuals or groups from knowing how they operate, what they have done, and what they plan to do; but the MDBs also provide no mechanism (say the critics) for influence by members or representatives of citizens' groups whose aim is to protect the public interest at large—sometimes referred to as “civil society” organizations. In a world in which the importance of participatory rights is broadly accepted—for example, in human rights treaties that have been ratified by over three-quarters of all countries¹⁶—such unaccountability is anachronistic and unacceptable.

Second, critics claim that the MDBs' unaccountability is not only a structural shortcoming but also a practical shortcoming. That is, as a practical matter the MDBs actually do listen to corporate interests (say some critics) but disregard citizens' groups and NGOs. For example, it is asserted that MDB staff members are subjected to lobbying by companies that compete fiercely for billions of dollars worth of procurement contracts—that is, contracts awarded by the MDBs or by their borrowers for the supply of

¹⁶ Article 25 of the International Covenant on Civil and Political Rights, which has been adopted by roughly 140 countries, provides that “[e]very citizen shall have the right and the opportunity . . . [t]o take part in the conduct of public affairs, directly or through freely chosen representatives”.

equipment, the building of roads and structures, and the provision of consulting services. The decisions to award such contracts are made (according to critics) in circumstances that invite corruption of government officials and MDB staff members, and no adequate safeguards against such corruption have been put in place. More generally, corporate interests influence the overall selection and design of projects to be financed by the MDBs, it is claimed, as well as the overall policy direction of the MDBs—often overshadowing the interests of the persons and communities whose well-being the projects and policies are supposed to serve.

At the same time that the MDBs give undue influence, according to their critics, to corporations, the MDBs give too little attention to NGOs and civil society groups. The contribution that such groups can make in the development process is ignored, the critics say, and this in turn prompts some of these groups to take drastic, sometimes violent, actions that pit them against the MDBs as enemies. This needless antagonism is said to represent both (1) a squandering by the MDBs of the opportunity to benefit from the NGOs' enthusiasm and expertise and (2) a disregard by the MDBs of the recent moves within the UN to encourage the involvement of NGOs and civil society organizations.¹⁷

A third element of the “democracy deficit” criticism revolves around the weighted voting system. Under the weighted voting system, as noted earlier, a country's voting power is generally proportional to that country's subscription to the MDB's capital. From their inception, the MDBs have had capital structures (similar to that of the IMF) in which a handful of countries (including most markedly the USA) has controlled the bulk of the subscribed capital. Hence, that handful of countries controls a preponderance of the votes. For example, the G-7 countries (the USA, the UK, Japan, France, and Germany, Italy, and Canada)—none of which borrows from the MDBs, of course—control about 40 percent of the votes both in the IBRD¹⁸ and in the AsDB,¹⁹ and the voting power exceeds 50 percent if

¹⁷ For information about how the UN encourages in the involvement of NGOs and civil society organizations, see the UN Web site, at <http://www.un.org/dpi/ngosection/index.asp> (last visited July 4, 2007).

¹⁸ See World Bank, *THE WORLD BANK ANNUAL REPORT 2006*, at 110–113 (showing percentages of voting power as of June 2006 to be 2.82 percent for Canada, 4.17 percent for France, 2.71 percent for Italy, 4.49 percent for Germany, 6.64 percent for Japan, 5.06 percent for the UK, and 13.38 percent for the USA, for a G-7 total of 39.27 percent), available at <http://www.worldbank.org/annualreport/2006/PrintVersion.htm> (last visited July 14, 2007).

¹⁹ See Asian Development Bank, *THE ASIAN DEVELOPMENT BANK ANNUAL REPORT 2006*, at 112 (showing percentages of voting power as of December 2006 to be 4.493 percent for Canada, 2.167 percent for France, 3.768 percent for Germany, 1.751 percent for

(as often happens) the G-7 countries are joined by a few other European countries in decision making. This is one reason why the lack of symmetry in the making and enforcing of MDB policies (to be discussed in the last section of this chapter) is regarded as so venal: a small cluster of mainly Western countries can effectively impose economic and financial policies on most of the world's other countries, without having to hew to those policies themselves. And in some of the MDBs, a single country alone—the USA in the case of the World Bank, for example, and Japan in the case of the AsDB—controls the selection of the chief executive officer of the institution.

Fourth, another structural or charter-based peculiarity of the MDBs contributes further to their alleged unaccountability: the MDBs are not subject to any outside judicial review. In particular, the MDB charters vest in the MDBs themselves the sole authority to determine whether they are acting in compliance with their own charters. Naturally, any such determination is itself made via the weighted voting system. Although steps have been taken recently by some MDBs to establish “inspection panels” to assess whether the institution has followed its own rules, these steps (so the criticism runs) have been inadequate to overcome this structural deficiency.

Fifth, as if the structural deficiencies were not enough, the MDBs exhibit, according to their critics, yet another form or cause of unaccountability: many of their member states' governments, particularly in the poorer countries, are themselves undemocratic in character. Hence, even if a member country with a small capital subscription does succeed in having its voice heard in an MDB's deliberations, there is no guarantee (and often little likelihood) that that voice will reflect the views of that country's people, including the persons most directly affected by the projects or policies at issue.

To sum up, the “democracy deficit” complaint, as directed against the MDBs, has several elements:

- The MDBs provide little structural accommodation for citizen involvement in MDB decision making;
- As a practical matter the MDBs actually do listen to corporate interests but disregard citizens' groups and NGOs;

Italy, 12.803 percent for Japan, 1.939 percent for the UK, and 12.803 percent for the USA, for a G-7 total of 39.724 percent), *available at* http://www.adb.org/Documents/Reports/Annual_Report/2006/default.asp (last visited July 14, 2007). For a study of how the actual application of the weighted voting system in the AsDB affects the practical influence that some member countries have in decision making there, see generally Jonathan R. Strand, *State Power in a Multilateral Context: Voting Strength in the Asian Development Bank*, 25 *INTERNATIONAL INTERACTIONS* 265 (1999).

- The weighted voting system places control of the MDBs in the hands of a very few countries, leaving most people in borrowing member countries with virtually no influence over the actions taken by the MDBs' governing boards;
- The operations of MDBs are not subject to any outside judicial review; and
- The member states' governments themselves are in many cases undemocratic in character.

In evaluating these various elements of the “democracy deficit” criticism, I begin with the second of the five elements, which (along with the third) I wish to question before noting my agreement with the other elements. I believe the assertion that MDB policies and operations are unduly influenced by corporate interests generally runs in the wrong direction. As should be obvious from reading this chapter, I believe the MDBs should be open to influence by a broad range of groups and interests, and that formal mechanisms should in fact be developed to facilitate the bringing of such influence to bear on MDB decision making. Accordingly, I do not regard the influence that corporate interests have on MDBs (for example, on the overall selection of projects and policies) to be excessive in quantity; instead, that level of influence should be matched by the influence that other groups have. However, the complaints sometimes voiced about lobbying by companies and the possibility of corruption do merit close attention because they relate not to the quantity of the influence but rather to the quality or character of such influence.

As for lobbying, MDB staff members should be subject to the same types of standards as those that apply to civil servants in many national governments: contacts with private-sector parties wishing to influence policy or operations should be subject to scrutiny, reporting, and of course restrictions on any gifts. As for corruption, most of the MDBs have adopted rules and procedures to prevent corruption of their own staff officials by persons from any quarter, including corporate interests. For example, the Inter-American Development Bank (IADB) has undertaken an initiative for “Strengthening a Systemic Framework Against Corruption” under which IADB staff are to “act in accordance with the highest standards of integrity”. The AsDB adopted an anti-corruption policy in 1998²⁰ and established

²⁰ See John W. Head, *Asian Development Bank*, in INTERNATIONAL ENCYCLOPAEDIA OF LAWS 24 (R. Blanpain ed., 2002). For the current version of the anti-corruption policy (as updated in March 2006), see <http://www.adb.org/Documents/Manuals/Operations/OMS-C5-anticorruption.pdf> (last visited July 4, 2007). It defines corruption as “behavior on the part of officials in the public and private sectors, in which they improperly and unlawfully enrich themselves and/or those close to them, or induce others to do so, by misusing the position in which they are placed”. *Id.* It then prescribes methods for fighting corruption both within the AsDB and in its member countries. In doing so, however, the policy expressly cites the “political prohibition” in its charter, Article 36(2), and notes

within the Office of the General Auditor an anticorruption unit authorized to receive evidence of corruption, undertake preliminary inquiries, convene an oversight committee when necessary, and conduct investigations—with the General Auditor reporting directly to the AsDB president. Likewise, the World Bank has in recent years given dramatically increased attention to fighting corruption.²¹ Although efforts such as this require further development, they are unmistakably on the right track and will be spurred on by further transparency and accountability.

As for the complaint that the MDBs disregard citizens' groups and NGOs, I am skeptical. Several of the MDBs have undertaken important initiatives to broaden and strengthen their interaction with NGOs. For example, the AsDB has had a formal policy of encouraging such consultation and involvement with NGOs since 1987 and expanded that policy in 1999. In keeping with that policy, the AsDB has established positions of "NGO Network Coordinator" and "NGO Liason" and has Web site links to facilitate communication and cooperation with NGOs. Given such steps as these, I doubt there are many NGOs that have made a reasonable effort to convey their opinions to MDBs in the past five or ten years and found it difficult to do so.

Such NGO involvement comprises more than just communication, of course. The AsDB was already reporting, as of the year 2000, that nearly two-thirds of the public-sector projects approved for AsDB financing involved NGOs in some significant way—as, for example, by relying on microfinance NGOs to assist flood victims in Bangladesh and by working with NGOs to develop low-cost solutions to sanitation problems in Papua New Guinea. Frequent forums, workshops, and other meetings are conducted by MDBs with NGOs, and officials of NGOs regularly work in the MDBs under secondment arrangements. In these and other ways, much

that the AsDB's initiatives on corruption "will be grounded solely upon economic considerations and concerns of sound development management . . . [and] will not involve interference in the political affairs of a member country". *Id.*

²¹ For an account of World Bank efforts in this regard, see Murray Hiebert and John McBeth, *Stealing from the Poor*, FAR EASTERN ECONOMIC REVIEW, July 29, 2004, at 1 (pointing out, for example, that in 1998 the World Bank President established a Department of Institutional Integrity, which now has a staff of fifty, including thirty investigators conducting 345 investigations into corruption around the world, and that World Bank efforts in this regard had led to twenty-five criminal convictions in national courts as well as twenty-eight dismissals from the bank itself). Details of World Bank and other MDB initiatives to fight corruption were discussed a few years ago before the US Senate Foreign Relations Committee. In some July 2004 hearings, a US Treasury Department official praised the MDBs for their anti-corruption efforts, noting that "[t]he managements of the MDBs are to be commended for the positive steps they have taken in recent years to fight corruption, following the example set by the World Bank".

has been done to involve NGOs and “civil society” in MDB work.²² Protestors marching outside the World Bank headquarters during a joint annual meeting of the World Bank and the IMF are unlikely to get invited to lunch that day with a World Bank official, but under less confrontational circumstances, such meetings can and do occur. In short, I am not persuaded by complaints that the views and representatives of NGOs are systematically disregarded or excluded now by the MDBs. To the contrary, I see much truth in the image that one analyst used in describing the World Bank as a Gulliver tied down by endless threads of socially active groups (effective little Lilliputians).²³

Let us move to another of the elements of the “democracy deficit” complaint as directed against the MDBs. It claims that the weighted voting system inappropriately places control of the MDBs in the hands of a very few countries, leaving most people in borrowing member countries with virtually no influence over the actions taken by the MDBs’ governing boards.

I do not find this element compelling standing on its own. As I shall explain in examining the “asymmetry in obligations” criticism (in the last section of this chapter), it is the combination of the weighted voting system and MDB conditionality—not the weighted voting system just by itself—that raises a specter of unfairness. That specter of unfairness prompts me to offer, in Chapter Six, some suggestions in this regard, involving both (1) a mechanism for reporting the national economic performance (including development performance) of non-borrowing members and (2) a linkage between voting power and national economic performance. Also in Chapter Six I shall have more to say about the illegitimacy of permitting any single country to have an effective monopoly over selecting the president of any MDB.

I find the other three elements of the “democracy deficit” criticism well-founded and compelling. Those other three elements are (1) that the MDBs provide too little structural accommodation for citizen involvement

²² According to one observer, NGOs have been able “to pressure international financial institutions such as the World Bank . . . to be transparent and accountable . . .” and have found the World Bank and other international institutions to be “soft targets for civil society. The [World] Bank has involved civil society in more than 700 of its projects since 1973” Guisai Mutume, *Development: Civil Society Seeks Greater Role in Global Finance*, Inter Press Service, Apr. 8, 2001, LEXIS.

²³ This image was drawn by Robert Hunter Wade in his article *The U.S. Role in the Malaise at the World Bank: Get Up Gulliver!*, available at <http://ksghome.harvard.edu/~drodrik.academic.ksg/WadeG24.pdf> (last visited July 18, 2007), as elaborated by Ngaire Woods in *THE GLOBALIZERS: THE IMF, THE WORLD BANK AND THEIR BORROWERS* *supra* note 10, at 8.

in MDB decision making; (2) that the operations of the MDBs are not subject to any outside judicial review; and (3) that the member states' governments themselves are in many cases undemocratic in character. Accordingly, I also suggest in Chapter Six some changes that would increase citizen involvement, impose judicial review on MDBs, and authorize the MDBs to promote government reform in member countries that have not yet embraced the principles of multiparty representative governance.

C. The WTO and Partial Unaccountability

The “democracy deficit” takes on a different hue when it is leveled at the WTO instead of at the IMF or the MDBs. The WTO is said by its critics to be undemocratic in two main ways: (1) in excluding participation by citizens; and (2) in having no allegiance to political authorities, a fact that permits it to impose its will arbitrarily on its member countries. Absent from these complaints is any reference to weighted voting, of course, because the WTO does not share that system of governance with the IMF and the MDBs; the WTO operates instead on a one-state-one-vote system. Because of this difference, the “democracy deficit” complaint in the context of the WTO typically claims not that the institution is in the pocket of a few rich countries but instead that it is completely untethered politically, and therefore able to visit whatever mischief it wishes to on its member countries—especially those that want to protect against job losses, environmental degradation, unethical labor practices, and so forth. According to the critics, this institutional independence allows the WTO to ignore the involvement of NGOs and other representatives of civil society as well as the political authorities of its member states.

As a teacher, I would give only half credit for this assessment. In the following paragraphs I shall explain why it is that I do in fact endorse the “democracy deficit” criticism as it applies to the WTO, but for very different reasons from those that apply in the case of the IMF and the MDBs. I wish to highlight these differences by first identifying some aspects of the “democracy deficit” criticism that I *reject* as it pertains to the WTO.

1. *Democracy in the WTO?*

My evaluation of this criticism begins with a general confession: I believe we can overdo democracy. More specifically, I do not want the WTO to be democratic, if democracy means that amateurs (I include myself in this category) have the opportunity to vote on new policies (legislating) or on the interpretation or application of existing rules (adjudicating). In this respect, I view trade policy as I view monetary policy: it is extraordinarily complicated. I noted earlier that I do not want amateurs to be directly involved in policy discussions and decisions of the IMF any more than I

would want my neighbor's sixteen-year-old son to sit in on the regular policy meetings of the US Federal Reserve Board, at which interest rates are set. Similarly, I do not want amateurs (including my neighbor's sixteen-year-old son) to have a vote at WTO dispute panel deliberations.

Instead, the WTO should be operated by, and mostly influenced by, persons who have expertise in international economic relations, especially trade relations. This is by no means incompatible with democracy: the experts selected to carry out the functions of the WTO can and typically should be appointed by authorities whose powers to do so result from democratic processes (a point on which I elaborate below); and they should solicit and consider well-informed views from outside sources. But decisions about WTO rules, policies, and personnel should not be the result of direct general citizen participation or popular vote.

2. *The WTO's Allegiance to Its Members*

There is another aspect of the “democracy deficit” criticism, as directed against the WTO, that I also reject. Recall that this criticism, as I summarized it earlier, asserts that the WTO is undemocratic not only (1) in excluding participation by citizens but also (2) in having no allegiance to political authorities—with the result that the WTO is a “free agent” that can (allegedly) impose its will arbitrarily on its member countries. The latter element strikes me as almost completely misplaced because it does not square with reality. WTO membership is voluntary, and its management is selected by its member countries.²⁴ The role of the WTO Secretariat is not to make rules but to administer rules accepted by the WTO's member countries on a one-state-one-vote basis. Any major change in those rules requires consensus.

Indeed, some commentators have implied that the WTO is *too* democratic, in the sense that the requirement of consensus for most policy decisions “may be a recipe for impasse, stalemate, and paralysis”,²⁵ and to avoid

²⁴ These subjects are covered in the WTO Charter, especially in Article XV (right of withdrawal from membership) and Article VI (appointment of Director-General). Other information about the membership and management of the WTO appear in the “nutshell” account of the WTO appearing in Chapter Three.

²⁵ John H. Jackson, *The WTO 'Constitution' and Proposed Reforms: Seven 'Mantras' Revisited*, 3 JOURNAL OF INTERNATIONAL ECONOMIC LAW 67, 74 (2001). Another commentator, while stopping short of worrying about paralysis, does emphasize that the requirement of consensus does provide one of the “democratic checks” within the WTO and creates “a deeply conservative bias in the decision making apparatus”. Andrew T. Guzman, *Global Governance and the WTO*, 45 HARVARD INTERNATIONAL LAW JOURNAL 303, 337–338 (2004).

such problems, some observers have suggested that a WTO Consultative Group be created to provide the same “Green Room” preparatory services carried out less formally in earlier years.²⁶ Whatever the merit of these views, the fact remains that there is plenty of ultimate accountability of the WTO to its constituent members—that is, the national governments that have formed it, joined it, and remained part of it. Recall that the WTO’s membership already numbers 150 countries, with others currently engaged in accession negotiations.

Perhaps this latter fact—that the vast majority of states in the world have become and have remained members of the WTO—is worth emphasizing, for it suggests that not one of the many criticisms leveled at the institution, including the criticisms about a democracy deficit, has prompted countries to leave the WTO. Apparently WTO member countries do consider that the continued existence of the WTO, and their participation in it, remains within their countries’ national self-interest. Perhaps one reason for this calculation, especially from the perspective of less developed countries, is that the WTO does provide a forum in which they have real power, including the power to win trade cases against economically powerful countries who have broken the WTO rules.

3. *Genuine Unaccountability Problems*

Having identified some aspects of the “WTO democracy deficit” criticism that I reject, I now explain why, on balance, I endorse the criticism. Four factors prompt me to do so. The first three focus on NGO input, member equality, and judicial review.

As I noted above, views differ as to whether, and how much, NGOs should be permitted to participate in WTO policy-making and dispute settlement proceedings. Pro-NGO commentators have argued that NGO participation would dispel some of the mystery that surrounds the WTO and hence aid in gaining public support; they also assert that the WTO must have a global perspective, which cannot be achieved solely through the input of government trade officials. NGO participation, they say, could take the form of providing expert opinions and external perspectives in the course of both policymaking and dispute settlement—consistent with a “stakeholder” model in which all parties with a stake in trade policy would have the opportunity for input.

²⁶ See generally Richard Blackhurst and David Hartridge, *Improving the Capacity of WTO Institutions to Fulfil Their Mandate*, 7 *JOURNAL OF INTERNATIONAL ECONOMIC LAW* 705 (2004).

In opposition to expanding WTO standing or participation to include NGOs, another commentator has argued (1) that giving greater publicity to trade policy “might prove disastrous for free trade”, in part because it generally injures some domestic constituency, (2) that only wealthy interest groups would be able to participate, with the result that democratic interests still would not be served, and (3) that the WTO would not be able to filter out legitimate NGOs from illegitimate ones.

I agree with the pro-NGO commentators—those urging that NGO participation is vital in order to build and maintain public support for trade liberalization and for the work of the WTO in particular, and that such participation can take several forms. The NGOs themselves, of course, should meet high standards of competence, professionalism, disclosure, and accountability in order to gain the necessary capacity or certification to participate. (Otherwise their involvement would constitute no more than the kind of “general citizen participation or popular vote” that I objected to earlier in this subsection.) I offer recommendations regarding NGO participation in Chapter Six.

A second aspect of the “democracy deficit” criticism that I believe packs a punch against the WTO concerns inequality among WTO members in terms both of their influence and of their treatment in the WTO. Despite the one-state-one-vote character of the WTO’s organizational structure, as a practical matter some states—the USA comes instantly to mind—enjoy much more clout than most other states have. Conversely (and curiously), some especially small states—such as some Pacific Island states—have in effect heavier demands placed on them than others do.²⁷ Perhaps there is little that can be done (immediately, at least) to counteract this, given the current geopolitical realities of the world, but it is a deficiency that should be overcome in due course. Again, one step in the right direction would be to boost the transparency of WTO operations so that informed criticism can be voiced over any inappropriate efforts to circumvent the basic democratic nature of the WTO’s one-state-one-vote structure.

A third aspect of the “democracy deficit” criticism also rings true when applied to the WTO: the institution is not subject to any effective and objective mechanism for adjudicating bona fide claims brought by individuals or groups alleging that the institution has acted inconsistently with the

²⁷ For an interesting account of the latter point, see Jane Kelsey, *World Trade and Small Nations in the South Pacific Region*, 14 KANSAS JOURNAL OF LAW & PUBLIC POLICY 247, 258–275 (2005) (describing the heavy trade and investment liberalization demands placed on Vanuatu and some other Pacific Island countries in negotiations for their accession to the WTO).

legal rules and policies governing its operations. There is, in other words, no broadly effective outside judicial review available. In this regard the WTO lags behind the MDBs and the IMF. As explained above, several types of inspection panels are being developed in the MDBs to provide for this form of accountability, and the IMF's IEO represents a move in the same direction. In my view, similar initiatives should occur within the WTO.

An observer familiar with the WTO might immediately reply to this suggestion by pointing out that the WTO does in fact have a rather effective system of court-like procedures and institutions, namely the system established under the DSU (Dispute Settlement Understanding, one of the treaties emerging from the Uruguay Round of trade negotiations) for litigating complaints raised by one country against another country's trade policies or practices. I summarized that system in my "nutshell" account of the WTO in Chapter Three. On balance, it strikes me as a good system as far as it goes, notwithstanding the concerns I have already expressed over (1) the outcomes of specific cases brought before it and (2) the need for greater NGO access. However, that system does not go far enough in its jurisdictional reach to provide what I referred to above as an effective and objective mechanism for adjudicating bona fide claims brought by individuals or groups alleging that the WTO has acted inconsistently with the legal rules and policies governing its operations. Achieving that goal would require changes in the DSU, and probably amendments to the WTO Charter itself.

4. *Strengthening Weak National Governments*

A fourth complaint related to the "WTO democracy deficit" criticism requires some special treatment because it is not directed at the WTO per se or at the trade liberalization agenda that the WTO promotes. Instead, that related criticism is that the governments of many WTO member countries are themselves undemocratic, in the sense that they lack the institutional structures necessary to ensure that policy makers are not "captured" by a few powerful interests but instead have at least some minimal level of competence, honesty, and objectivity in establishing and conducting economic policy for their constituents.

Even though this is a criticism not of the WTO but of its member countries, I address it here because I regard it as a central reason underlying several other problems in the current regime of international trade. I shall give this matter closer attention in Chapter Six, so I shall not belabor the point here. Simply stated, my view is that many states need stronger, better national governments than they now have. Such stronger national governments would adopt economic and financial policies, including trade policies, that would better serve the populations of their states. They would, for

example, enact and enforce more effective protections against the kinds of bad environmental practices and bad labor practices that many critics of the WTO condemn. Those bad practices typically come not at the hands of the governments themselves but at the hands of private sector entities that are able to persuade weak governments to permit the practices to continue.

How can governments be strengthened? I believe that a long-term commitment of resources is needed with two complementary aims in sight. First, the problems of profound poverty and economic despair—problems that exist in many countries—must be effectively attacked through a dramatic increase in development financing that will build schools, train teachers, improve health care facilities, create jobs, provide decent housing and sanitation systems, and establish social security networks. At the same time, comprehensive efforts must be made to build and strengthen the legal and institutional elements that are essential to the efficient running of a modern government, including effective rules on an array of economic matters—banking supervision, land registration, secured transactions, documentary payments, deposit insurance, tax collections, accounting standards, corporate governance and disclosure, business licenses, product safety, workplace standards, and so on—as well as training of officials on the administration of such rules. Special attention should be given to rules on environmental protection.

And where will the money come from for these initiatives? From a massive increase in the amounts of financial assistance provided by the rich countries, especially the USA, for international economic development. Although some Americans seem to think the USA already provides large amounts of such assistance, the USA would in fact have to devote five times as much money to economic development aid as it does now if it wanted to reach even the very modest goal (set some time ago by the UN) of 0.7 percent of gross domestic product.²⁸

²⁸ See Joseph Kahn, *U.S. Rejects Bid to Double Foreign Aid to Poor Lands*, NEW YORK TIMES, Jan. 29, 2002 (reporting on the Bush-Cheney administration's rejection of an international proposal to double foreign aid in the wake of the war in Afghanistan). For a recent critical analysis of the Bush-Cheney administration's foreign assistance spending, see Stewart Patrick and Kasie Brown, *Failing States and US Foreign Assistance: Show Me the Money*, available at http://www.cgdev.org/files/9373_file_WP96_final.pdf (last visited July 18, 2007). This study, issued by the Center for Global Development, indicates that proposed US non-military foreign affairs spending in fiscal year 2007 amounted to less than 1.3 percent of the overall US federal budget, and of that amount, only about 5 percent was to be allocated to bilateral development assistance and roughly another 7 percent to multilateral efforts, including funding for the MDBs. It is true that President Bush has received some praise for his claim (in June 2005) of having tripled US aid to Africa. See, e.g., Michael Fletcher, *Bush Has Quietly Tripled Aid to Africa*, WASHINGTON POST, Dec. 31, 2006, at A04, available at <http://www.washingtonpost.com/wp-dyn/content/article/2006/12/30/AR2006123000941.html> (last visited July 18, 2007). However,

Indeed, this point about the inadequacy of US development assistance is important enough to warrant further attention. A recent edition of *World Development Indicators* provides details concerning the development assistance provided by each of the twenty-two members of the Development Assistance Committee of the Organization for Economic Cooperation and Development (OECD)—these are twenty-two relatively rich countries including, of course, the G-7 countries and fifteen others ranging from Australia to Finland to Luxembourg to Switzerland.²⁹ Three especially noteworthy sets of figures show how much each of those countries provides in the form of official development assistance³⁰—first on a per capita basis, second as a proportion of government disbursements, and third as a proportion of gross national income.

In 2004, the most recent year reported on, the USA spent on average \$66 per US national on official development assistance. This put the USA seventeenth out of the twenty-two rich countries that are members of the Development Assistance Committee. That is the first of the three ways of measuring how much the USA contributes to global development through official development assistance.

The second way of measuring the US contribution is as a proportion of government disbursements. This set of figures puts the USA in an even less favorable light. As a percentage of general government disbursements, the USA came in nineteenth out of the twenty-two members of the Development Assistance Committee, committing only forty-seven hundredths of 1 percent of its government spending to providing official development assistance.

President Bush's claim to having tripled US aid to Africa has also been refuted. See, e.g., Susan E. Rice, *U.S. Foreign Assistance to Africa: Claims vs. Reality*, GLOBAL POLITICS, June 27, 2005, available at <http://www.brookings.edu/views/articles/rice/20050627.htm> (last visited July 18, 2007). This Brookings Institution study concludes that when Bush made his claim, US aid to Africa had not "tripled" or even doubled. "Rather, in real dollars, it has increased 56 percent (or 67 percent in nominal dollar terms). The majority of that increase consists of emergency food aid, rather than assistance for sustainable development of the sort Africa needs to achieve lasting poverty reduction".

²⁹ World Bank, 2006 WORLD DEVELOPMENT INDICATORS Table 6.9 (2006) (describing the Development Assistance Committee and listing its members). All the figures in the next few paragraphs come from this World Bank document, available at <http://dev-data.worldbank.org/wdi2006/contents/Section6.htm> (last visited July 22, 2007).

³⁰ For OECD purposes as applicable here, "official development assistance" is financial assistance (loans and grants) provided by national governments both through bilateral channels (such as the US Agency for International Development, in the case of the USA) and through multilateral channels (such as transfers made by the USA to the International Development Agency (IDA), the World Bank's "soft" loan unit).

The third way of measuring the flow of official development assistance is as a proportion of gross national income. Once again, the USA comes in near the bottom of the list—indeed, it appears in next-to-last place among the twenty-two members of the Development Assistance Committee. It devoted only seventeen hundredths of 1 percent of US national income to global development—about half as much as the levels provided by such countries as Australia, Austria, Canada, Germany, Japan, Portugal, Spain, and Switzerland, and less than a fourth as much as is provided by Denmark, Luxembourg, the Netherlands, Norway, and Sweden.

In my view, this is inadequate. It is shameful. I believe that as the most powerful country in the world, and in many respects the richest, the USA should be leading the way in boosting global development through official development assistance financing. Instead, this country has fallen short. Looking at similar figures a few years ago, the columnist Paul Krugman wrote a Christmas-Day editorial chastising the USA for being “the Scrooge of the Western world—the least generous rich nation on the planet”.³¹ I regard this as a breach of the American responsibility to manage and husband its resources—its economic resources, its human resources, its political influence—in a way that serves its own long-term national interest and the long-term interests of the world at large.

Unfortunately, I see this American shortcoming as part of a larger pattern of policy and ideology that I deplore and that reflects a gradual abandonment of the commitment made six decades ago to seek multilateral solutions for global problems in a wide array of areas, including economics, human rights, and the use of military force. I return to this point in Chapter Six.

III. MISSION CREEP OF THE MDBS AND THE IMF

As I summarized it in Chapter Two, the “mission creep” complaint claims that “as both a legal matter and a practical matter, the IMF and the MDBs have all overstepped their authority and their competence. They have acted *ultra vires* and, in adopting policies on a proliferation of topics, they have severely undercut their ability to fulfill the functions originally prescribed for them”. For examples of how this complaint has appeared in various written works, see the items summarized under Criticisms I-6 and II-9 in the Appendix to Chapter Two.

³¹ Paul Krugman, *The Scrooge Syndrome*, NEW YORK TIMES, Dec. 25, 2001, *reprinted in* Paul Krugman, *THE GREAT UNRAVELING: LOSING OUR WAY IN THE NEW CENTURY* 379–380 (2003).

It is in respect of MDB operations that the “mission creep” complaint has been most broadly and emphatically made, so our discussion of this complaint should begin there. In explaining my assessment of the criticism, I shall also offer my views on how the MDBs should be regarded in the international legal and political system, both as a historical matter and for the future.

A. Mission Creep and the Three Generations of MDBs

The “mission creep” complaint claims that the MDBs have become far too broad and scattered in their focus, and hence less effective in their operations, because they have responded to every policy fad that has come along. This criticism was given special visibility by an article written a few years ago for the journal *Foreign Affairs* by Jessica Einhorn, a former World Bank official. She asserted that “[b]y now, [the World Bank’s] mission has become so complex that it strains credulity to portray the bank as a manageable organization”.³² She described the ways in which the World Bank has gradually widened its focus to take account of environmental sustainability, equitable income distribution, institutional strengthening, debt relief, poverty reduction, financial crisis management, banking regulation, corporate governance, gender disparities, narcotics, crime, and corruption. (She could have added microcredit, judicial reform, indigenous peoples, involuntary resettlement, governance, money laundering, public participation, and anti-terrorism.)

The alleged result of this “mission creep” has been both a dilution of the MDBs’ commitment to true economic development and an expansion of MDB purposes and operations into areas in which they have no competence and in which, under their charters, they have no authority. According to critics, this adventure into *ultra vires* activity has left the MDBs too broad and too shallow. They are gripped, the critics complain, by “policy proliferation” or “policy paralysis”, so something has to change to get them back on their proper (narrow) track.

1. Old Dogs and New Tricks

Evaluating this complaint both invites and requires us to examine some elementary principles and to review some important history. Let us begin with the history. As I mentioned above in my Chapter Three “nutshell” account of the MDBs, I view the evolution of the MDBs over the past sixty years in terms of three generations. To summarize:

³² Jessica Einhorn, *The World Bank’s Mission Creep*, 80 FOREIGN AFFAIRS, Jan.–Feb. 2001, at 22. See also *id.* at 24, 27, 29–32.

- First generation. The IBRD was established in 1944 to be, first and foremost, a reconstruction bank—that is, a financial intermediary that would facilitate Europe’s reconstruction following World War II. Its founders gave relatively little focus to the “D” in IBRD (the economic development of the poorer countries), and they prohibited the IBRD from engaging in political influence.
- Second generation. The establishment of the IDA and of the first three regional development banks (all created around 1960) came in response to the rising importance of the less developed countries (LDCs), many of which were former colonies. These institutions provided for lower-cost loans and gave greater regional focus where the LDCs were located. Those institutions were still envisioned primarily as banks, however, with no mandate for influencing the overall political or economic policy choices made by their member countries.
- Third generation. The founders of the European Bank for Reconstruction and Development (EBRD) extended that institution’s scope well beyond development banking by explicitly adopting three mandates—political, economic, and environmental—that had been absent from the charters of its predecessors. Under these mandates, the EBRD was to engage in the business of broad policy regulation—that is, urging borrowing member countries to take measures, beyond those relating narrowly to development financing, that the EBRD membership as a whole favored.

It is important to note that the old dogs learned new tricks. With the emergence of each new generation, the MDB(s) of the previous generation assumed an increasingly broader role. By the time the IDA was established in 1960, the IBRD had already shifted its focus to the developing world. By the time the EBRD was established in 1990, all of the MDBs that preceded it had already taken on some aspects of policy regulation and were therefore pressing hard against the outer limits of their charters. Indeed, in the same year that the EBRD was making its first loan (1991), the World Bank General Counsel, Ibrahim Shihata, published a book explaining (and defending) the evolution of the World Bank’s work and emphasizing “the ability of the World Bank to adapt its activities to variable and changing circumstances while acting within the original legal framework established by its Articles of Agreement”.³³ Now, about a decade and a half later, all the

³³ Ibrahim F. I. Shihata, *I THE WORLD BANK IN A CHANGING WORLD* viii (1991). For a review of Shihata’s attempt in that book to defend the World Bank against criticisms that it had been either too timid or too aggressive vis-à-vis the limitations of its founding

MDBs have, as noted above, expanded their purview to include a very broad range of policies that the institutions and their borrowing members are to follow.

2. *Legality and Ideology*

Is this policy expansion—what former World Bank official Jessica Einhorn calls “mission creep”—appropriate? That question involves two subsidiary issues. Expressed in simple terms, they are:

- Charter fidelity or *ultra vires*? This issue revolves around treaty interpretation. Have the MDBs been faithful to their charter provisions—especially those “political prohibitions” that apply to the first- and second-generation institutions—or have they acted outside their charters (*ultra vires*) by expanding their purview in the ways described above?
- Development banks or regulatory agencies, or both or neither? This issue is a matter not of legality, but rather of ideology and policy. Is it necessary to have development banks at all in today’s world of sophisticated financial markets and services? If so, is it appropriate to allow such banks to engage in global policy regulation?

In considering the first of these two issues (charter fidelity or *ultra vires*), I am attracted to the assessment that Professor Robert Hockett has given of complaints that the IMF has acted *ultra vires* in broadening its agenda. We shall turn later to the “mission creep” complaint as it applies against the IMF, but Professor Hockett’s analysis applies equally well to the MDBs. He rebuts the “mission creep” claims.³⁴ His defense of the legality

instruments, see John W. Head, *The World Bank in a Changing World: Selected Essays by Ibrahim F. I. Shihata*, 87 *AMERICAN JOURNAL OF INTERNATIONAL LAW* 351, 351–352 (1993) (book review). The third book in Shihata’s three-volume work on the World Bank, written about a decade after the first book, offers an updated discussion regarding the “evolution of the scope of the Bank’s mandate”. Ibrahim F. I. Shihata, III *THE WORLD BANK IN A CHANGING WORLD* 73 (2000). Shihata notes that the World Bank took a “holistic approach as it realized the inevitable linkage between economic and social development, the necessity of institutional development and the direct effect of the macro-economic framework on the prospects of success or failure” in its lending operations. *Id.* at 77. Taking account of these factors, Shihata asserts, is consistent with the mandate set forth in the IDA and IBRD Charters. *Id.* at 77.

³⁴ See Robert Hockett, *From Macro to Micro to “Mission-Creep”: Defending the IMF’s Emerging Concern with the Infrastructural Prerequisites to Global Financial Stability*, 41 *COLUMBIA JOURNAL OF TRANSNATIONAL LAW* 153, 177–190 (2002). Hockett, who is fast becoming a recognized expert on legal and theoretical aspects of international financial institutions, is a KU Law School graduate and a former student of mine.

of the IMF's evolution includes several elements, including the point that the IMF Charter vests in the IMF itself all power to interpret its own charter—a matter that he says raises “a nearly irrebuttable presumption in favor of formal legality” of IMF action. Beyond that, however, is the fact that the IMF Charter provisions are actually quite broad in their formulation—the result, Hockett explains, of efforts by the persons drafting it “to incorporate a good deal of ‘creative ambiguity’ into the [charter’s] final draft in order to provide for future contingencies and to secure agreement”.

As noted above, the same analysis applies in respect of the MDBs. First, it would be difficult to assert, as a legal matter, that the MDBs have acted *ultra vires*, given the fact that their charters (like the IMF Charter) provide for self-interpretation. That is, the charters give the MDBs’ own governing bodies complete authority to decide questions of charter interpretation or application.³⁵ In addition, the MDB charters (again, like the IMF Charter) are drafted broadly enough, presumably on purpose, to permit the MDBs to give at least some attention to such issues as those of the sort I enumerated above—environmental protection, indigenous peoples, involuntary resettlement, governance, corruption, public participation, the role of women in development, poverty reduction, and the like—because any and all of these can have a bearing on the central objectives prescribed for all of the MDBs in their charters.³⁶

Given these factors, I dismiss the “MDB mission creep” claim insofar as it is legal in character. Instead, I submit that the MDBs have, as the World Bank General Counsel, Ibrahim Shihata (in the books cited earlier), urged us to conclude over fifteen years ago with regard to the World Bank, remained largely true to their charter provisions, especially if we are prepared to take a “purposive” or “teleological” approach to charter interpretation.

³⁵ For the provisions on charter interpretation, see Article IX of the IBRD Charter, Article X of the IDA Charter, Article XIII of the IADB Charter, Article VIII of the African Development Bank (AfDB) Charter, Article 60 of the AsDB Charter, and Article 57 of the EBRD Charter. In the context of the IMF, Professor Hockett has noted that the power of self-interpretation that such provisions grant “is most unusual in the . . . international (not to mention domestic) legal systems”. Hockett, *supra* note 34, at 178–179.

³⁶ One of the first provisions in each of the MDB charters is a statement of the institution’s purposes. All of these “statement-of-purpose” provisions are drafted broadly. For example, Article 1 of the AsDB Charter states that the AsDB’s purpose “shall be to foster economic growth and co-operation in the region of Asia and the Far East . . . and to contribute to the acceleration of the process of economic development of the developing member countries in the region, collectively and individually”. Article 2 of the AsDB Charter, entitled “Functions”, then enumerates five areas of activity—again in broad terms, such as “to promote investment in the region of public and private capital for development purposes”—and ends with an all-encompassing authority “to undertake such other activities and provide such other services as may advance its purpose”.

A possible exception to that conclusion is of very recent vintage: within the last few years, some of the MDBs have explicitly, and with much fanfare, announced what amounts to a shift in purpose—from economic development (as prescribed in their charters) to poverty reduction.³⁷ Viewed from a practical perspective, of course, the shift from economic development to poverty reduction might not seem to amount to much. As Fred Mesch, a friend and former colleague of mine at the AsDB, pointed out in an e-mail message to me a few years ago: “Most of us in ADB—and probably in other MDBs—would deny there has been any substantive ‘shift’ from economic development to poverty reduction. If the former does not include the latter, if we’ve not been pursuing elimination of poverty, what have we in ADB been doing since the start of our operations in 1967?”

However, “economic development” could easily be regarded as having a different reach, and encompassing different types of activities, from those of “poverty reduction”. For example, “economic development” can include building a society’s infrastructure—roads, ports, power plants—so as to boost aggregate economic activity (measured in the society’s gross domestic product) without directly addressing the needs of those portions of the society that are mired in poverty. Indeed, a World Bank annual report dating from 1990 reflected this view of “economic development” in noting that the IBRD’s charter provisions require that the institution “must lend only for productive purposes and must stimulate economic growth”. On the other hand, “poverty reduction” might include some activities—for instance, the provision of fuel subsidies or short-term disaster relief—that would not, under that traditional view, constitute “economic development”.

Therefore, although this purported shift in purpose from economic development to poverty reduction might not elicit the same type of criticism that some other forms of MDB “mission creep” have attracted, the shift could be viewed from a *legal* perspective as the most egregious departure to date from the MDBs’ charters, none of which makes any direct reference to poverty reduction. Indeed, my electronic search of the entire texts of those charters indicates that the word “poverty” does not appear anywhere in any of them.

At bottom, however, the “mission creep” criticism leveled at the MDBs probably rests less on a concern over *legality* than on a concern over economic *ideology* and the power of inter-governmental institutions. Hence the

³⁷ See, e.g., the World Bank, *THE WORLD BANK ANNUAL REPORT 2002*, which asserts (at page 12) that the World Bank’s “mission is to fight global poverty”). For similar references pertaining to poverty alleviation as a goal of the IADB, the AfDB, and the AsDB, see their Web sites.

second issue noted above: Do we want (at the multilateral level) development banks, regulatory agencies, or both, or neither?

Although critics of the MDBs seldom accompany their criticisms with a clear statement of their underlying ideologies, I believe such critics could be classified by (1) whether they generally favor or disfavor having the MDBs continue to act in their traditional role as development banks and by (2) whether they favor or disfavor having MDBs act as international regulatory agencies—that is, as agencies responsible for urging their member countries (or at least the borrowing member countries) to adopt and implement prescribed policies on a wide range of topics. It would be interesting to take a survey of the critics (or, indeed, a survey of all persons knowledgeable enough about international affairs to care) in order to determine how many of them fall into each of the four Groups (A, B, C, and D) in the grid in Box 5.1.

Box 5.1: Views Toward the Role(s) of MDBs			
		Do you favor or disfavor having MDBs acting as international regulatory agencies?	
		Disfavor	Favor
Do you favor or disfavor the MDBs acting in their traditional role as development banks?	Disfavor	<i>Group A</i>	<i>Group C</i>
	Favor	<i>Group B</i>	<i>Group D</i>

Persons whose answers place them in Group A would probably call for the MDBs to be eliminated, on grounds that such institutions should not continue their operations either as development banks or as purveyors of policy. Public-sector development banks, those persons might say, are (1) anachronistic because worthy projects can now find plenty of financial support from the private sector, given the growing sophistication of the markets in recent decades, (2) ineffective in creating sustainable economic development (and indeed perhaps do more harm than good), and (3) incompetent or untrustworthy to hold any authority over the policy decisions that national governments should make. Some persons in Group A would go further, claiming that the principles of national sovereignty and self-determination should bar any international entity (not just MDBs) from forcing policy decisions on national governments.

Persons whose answers place them in Group B would generally favor the continued operation of the MDBs in their development banking role—

presumably because they think MDBs can provide services that are unavailable from (or better than) the private sector—but would strip the MDBs of the policy regulatory powers that they have increasingly assumed in recent years. These persons might argue (with some of their colleagues in Group A) that such policy regulation belongs instead in other international entities that have more experience in the pertinent areas, or that such policy regulation is off limits entirely to international entities and should be left to the province of national governments.

Persons whose answers place them in Group C might believe (along with those in Group A) that public-sector development banking is unnecessary or ineffective but would nevertheless see a role for MDBs as international regulatory bodies, using their influence to encourage member countries to adopt and implement policies generally favored by the international community. Of course, disagreements would likely remain over the content of those policies and the process by which such content is determined.

Persons whose answers place them in Group D would include those who find value in both roles for MDBs—as development finance institutions and as public regulatory bodies. Such persons might assert that the MDBs provide services not available from the private sector, that MDBs do more good than harm (and can perhaps be improved to do even more good), and that MDBs have (or can develop) the competence to do good work in developing, announcing, prescribing, and enforcing national-level policy choices in certain areas (for example, economic stability, environmental protection, and human rights) that have transborder or even global effects and are therefore of interest to the international community as a whole.

My answers to the two questions would place me in Group D. I am an internationalist, in the sense that I believe international cooperative efforts—through MDBs and other multilateral entities and initiatives—hold the best hope for civilization to survive the current age and in the long run offer the only hope for humanity itself to survive. As for public-supported development financing, I consider it to be just as vital (and yet just as subject to mistake and misuse) at the global level as it is at the national level. And I favor having the MDBs engage in policy regulation—urging their member countries to follow certain policies that the international community arrives at through a collaborative process—because I believe that such regulation is necessary and that the MDBs have both the leverage necessary to make such urging effective and the potential to carry out such operations competently.

I do not, however, believe that the MDBs are properly equipped now, from either a legal or an institutional perspective, to carry these two bur-

dens of development financing and policy regulation. As explained above, I view the evolution of the MDBs as falling into three generations so far, beginning roughly in 1945, in 1960, and in 1990. I believe it is time for a fourth generation to emerge in the evolution of the MDBs, in order (1) to respond to several criticisms that are in fact valid (as examined in the foregoing discussions) and (2) to make the MDBs responsive to the changed circumstances of this new century, in which international organizations must adhere to certain institutional and substantive principles (I shall discuss these in Chapter Six). I regard the past performance of the MDBs in a generally favorable light, but I think they must change or die in the coming years. And, to cast this issue again in terms of what I have called the Global Development War: the only way I see for accomplishing the changes that will be necessary in the MDBs (and that will be necessary in the IMF and the WTO as well) is to adopt an ideology of liberal, intelligent, participatory, multilateral, and sustainable human development.

B. IMF Mission Creep?

Although there are some differences between the “IMF mission creep” complaint and the “MDB mission creep” complaint, they are similar in most respects. One similarity is historical in nature. As noted in Chapter Two, the IMF underwent a fundamental change in its mission (and its Charter was amended accordingly) in the 1970s, when the par value system of fixed exchange rates collapsed. Further changes in course, although less drastic, were made in the 1980s with the emergence of the debt crisis and in the 1990s when the IMF started giving direct attention to “governance” issues and crisis management (most dramatically with the Asian financial crisis). As a result of these developments, the IMF now, according to many of its critics, has extended its operations into areas in which it has no authority and no competence.

In order to appreciate fully the “mission creep” criticism as it applies to the IMF, it is important to see the distinction, illuminated by Professor Daniel Bradlow, between (1) those critics who argue that the major problem with the IMF (and the MDBs) “is the way they have gone about expanding their mission rather than the mere fact that they have chosen to expand their mission” (this is a battle over the direction and content of mission creep) and (2) those critics who oppose any mission creep—that is, those who argue that the IMF’s mission creep “is tending to politicize the organizations in ways that will ultimately undermine their efficacy” and who believe “that the IFIs are now actively engaged in activities that require making judgments that rightfully belong to the sovereign member states”.³⁸

³⁸ Daniel D. Bradlow, *Should the International Financial Institutions Play a Role in the*

Perhaps this distinction could be abbreviated as separating those critics who say “not this mission creep” from those who say “not any mission creep”. (As explained above in the discussion of MDBs, the critics who say “not any mission creep” might be further divided into those who complain that mission creep is wrong as a matter of law and those who complain that mission creep is wrong as a policy or a practical matter.)

In reality, of course, these two main sets of mission creep critics agree on many points. It seems that most or all of them would strip the IMF of the crisis-bailout function that it assumed in the late 1990s beginning with the Asian financial crisis, and would cut down the volume, scope, and perceived intrusiveness of IMF conditionality, especially in those areas that seem furthest removed from the IMF’s domain of exchange rate collaboration and balance of payments stability.

Does the “IMF mission creep” complaint, in any of its various forms, hold water? Let us look again at the analysis the Professor Robert Hockett has offered. In discussing what he calls the IMF’s move “from macro to micro”, Hockett explains how the IMF has expanded its agenda to include microeconomic and structural issues—encompassing, he says, “market-facilitating legal and institutional arrangements” and, more recently, “laws of bankruptcy, corporate governance, and even political governance”.³⁹ But, as explained above, Hockett rebuts the “mission creep” claim on several grounds, including the fact that the pertinent IMF Charter provisions are quite broad in their formulation—the result, Hockett explains, of an intentional effort to incorporate ambiguity into the charter.

I find Professor Hockett’s analysis unassailable. From a legal perspective, the “mission creep” criticism fails when directed against the IMF.⁴⁰

Implementation and Enforcement of International Humanitarian Law?, 50 UNIVERSITY OF KANSAS LAW REVIEW 695, 709, 710 (2002).

³⁹ Hockett, *supra* note 34, at 156.

⁴⁰ To conclude, as I have, that the IMF has not acted *ultra vires* in gradually incorporating various issues into its purview is not to suggest that the IMF does not face pressures to act *ultra vires* in other respects. My own experience with such pressure came when I was working in the Legal Department of the IMF in the late 1980s and saw firsthand the attempts by representatives of the US government to have the IMF impose a sanction not contemplated by the IMF Charter—a suspension of voting rights—against a few countries that had failed to repay IMF credits on time. The Legal Department, led by François Gianviti as General Counsel, showed spine in resisting what would have been *ultra vires* action and in insisting that a suspension of voting rights was a power that the IMF could not legally exercise without an amendment to the IMF Charter. From this background emerged the Third Amendment, which I helped draft. As noted earlier, the Third Amendment came into force in 1992.

Professor Hockett also addresses another element of the “IMF mission creep” complaint—that mission creep, whatever its legal legitimacy, is wrong as a matter of ideology and policy. According to Hockett, the IMF’s expansion of its agenda to include structural and microeconomic matters is not only right as a matter of necessity but indeed “an entirely foreseeable consequence of floating exchange rates and the globalization of foreign exchange markets since the 1970s”. He states his point more fully in this manner:

The pragmatic case for the Fund’s shift of attention to microeconomic variables can . . . be reduced, with some perhaps regrettable crudity, to a simple “equation”: floating currencies (Second amendment), plus globally liberalized currency markets (arbitrage unimpeded by technological or regulatory limitation) and the potential cross-border “spillover” or “contagion” effects of financial panic equal a colossal heightening of the global regulatory importance of domestic microeconomic or “structural” variables. Sustained market confidence and the avoidance of global panic behavior simply demand attention from monetary authorities.⁴¹

Professor Hockett’s assessment should silence the “mission creep” critics from both a legal and a practical perspective. And it addresses both sides of the distinction Professor Bradlow draws between those critics who say “not any mission creep” and those who say “not this mission creep”. That is, Hockett has explained both (1) why it is appropriate for the IMF to adapt to changing circumstances in general and (2) why the specific direction that the IMF has taken in expanding the scope of its attention is both legal and necessary.

This analysis prompts a follow-up question: has the IMF gone far enough? Has it expanded and adapted the scope of its attention to include all the issues that it should take into account in order to fulfill its functions? I believe not. In particular, I believe the IMF needs to place more emphasis on social aspects of its operations, a matter that I discussed earlier, in Chapter Four. In Chapter Six I shall offer more details on that and other recommendations I have for the future of the IMF.

IV. ASYMMETRY IN OBLIGATIONS (IMF AND THE MDBS)

Finally we turn to the last of the eight “clusters” of complaints leveled at the GEOs. Recall that some of these “clusters” apply differently to dif-

⁴¹ Hockett, *supra* note 34, at 176. For a shorter treatment by Hockett of the same subject, see generally Robert Hockett, *Legally Defending Mission Creep*, 13 INTERNATIONAL LEGAL PERSPECTIVES 34 (2002).

ferent individual GEOs—and that indeed some of them do not apply in any significant way to one or more particular GEOs—but that combining them allows us to assess the GEOs from a general perspective.

The “asymmetry in obligations” complaint—the label for which I derive indirectly from the work of Professor Richard Edwards, a giant in the academic treatment of international monetary law⁴²—applies to both the IMF and the MDBs. According to this complaint, “the IMF and the MDBs permit their rich member countries to insist that the poor borrowing member countries follow certain policies without pressuring the rich countries to follow those policies themselves—and in fact some of the rich countries consistently fail (indeed refuse) to abide by such policy prescriptions, to the detriment of the world economy”. Examples of this criticism in the literature can be found in the Appendix to Chapter Two (see in particular the items summarized there under Criticisms I-7 and II-10).

A. Asymmetry in IMF Obligations

The “asymmetry in obligations” complaint highlights the disparity between rich industrialized countries and economically LDCs in terms of the obligations that their participation in the IMF entails. The criticism emerges from two legal and institutional features of the IMF that are central to some of the criticisms already described above. The first of these features is the IMF’s use of conditionality. As explained in the “nutshell” account of the IMF that I offered earlier in Chapter Three, lending by the IMF to its member countries is typically conditioned upon their adherence to certain economic and financial policies approved by the IMF.

The second feature is the weighted voting system under which the IMF operates. As also explained above (and as shown in Table A of the Appendix to Chapter Three), the G-7 countries hold nearly 45 percent of the total voting power in the IMF. Perhaps more telling, though, than this percentage is the percentage of voting power held by all the countries that have relatively strong economies and that do not borrow from the IMF. By adding to the total G-7 votes the votes of just ten such other countries—Australia, Austria, Belgium, Denmark, Finland, Netherlands, Norway, Spain, Sweden, and Switzerland—the percentage of voting powers increases to over 57 percent. Because these ten countries, like the G-7 countries, do not borrow from the IMF, they do not face the same policy obligations that IMF conditionality imposes on those LDCs that do borrow from the IMF.

⁴² Professor Edwards’ book *INTERNATIONAL MONETARY COLLABORATION* (1985) is a masterful examination of the IMF and the setting in which it operates. In that book, Professor Edwards (a friend of mine and professor emeritus at the University of Toledo) refers to “symmetry in adjustment” between rich and poor countries.

Combined, these two features of conditionality and weighted voting create an asymmetry in obligations that, according to critics, allows the rich industrialized countries controlling the IMF to force LDCs to adopt economic and financial policies that the rich countries themselves can disregard if they like. This asymmetry, it is alleged, is fundamentally unfair and perhaps illegal.

Is the “asymmetry of obligations” complaint valid in the context of the IMF? Yes. I view this issue as one of the most serious facing the IMF. Independently, both the IMF weighted voting system and IMF conditionality strike me as appropriate—at least in principle (although in practice the actual allocation of votes needs adjustment). After all, why shouldn’t those countries providing the most financial backing for an institution have the most control over its policies; and why shouldn’t a financial institution that depends on repayments of loans in order to stay afloat be permitted (indeed, required) to ensure that the borrower takes action likely to enable that borrower to repay the loan?

However, although each of the two features (weighted voting and conditionality) standing alone is legal and desirable, the two of them combined in the context of actual IMF operations can be nettlesome. Why? Because they result in asymmetrical obligations: the countries that control (through the weighted voting system) the IMF’s policies in imposing conditionality are the very countries that do not borrow from the IMF and to whom the policies prescribed by the IMF do not apply. Thus, the actual operation of conditionality smacks of unfairness and hypocrisy. What is sauce for the goose should, it seems, be sauce for the gander.

The sense of unfairness and hypocrisy gets stronger when the two countries that have the most votes in the IMF—the USA and Japan (holding about 17 percent and about 6 percent of the votes, respectively)—regularly engage in behavior that seems inconsistent with the economic and financial policies on which the IMF insists. Those economic and financial policies that the IMF insists on include such things as avoiding large budget deficits, imposing tough supervision of financial institutions to avoid sharp or imprudent practices, closing or restructuring troubled financial institutions, liberalizing trade policies, and opening up investment opportunities for foreigners.⁴³ Some policies and developments in the USA and Japan in recent years—the US savings-and-loan crisis of the 1980s, lax stan-

⁴³ Most of these types of policies appeared in the conditions attached to the “bailout” package of loans made in late 1997 to Korea under the Leadership of the IMF. Several of these also appeared in the conditions attached to the September 2003 stand-by arrangement for Argentina.

dards on corporate governance more recently, accounting and auditing scandals (leading to such meltdowns as that involving Enron), Japan's much-criticized handling of its banking institutions, both countries' frequent budget deficits, and trade protectionism in steel and agriculture—would almost surely have run afoul of IMF conditionalities had either of those countries sought to borrow from the IMF.

Indeed, in early 2004, US economic practices received intense criticism in an IMF staff report that gained front-page headlines in *The New York Times*. The *Times* article offered this summation:

With its rising budget deficit and ballooning trade imbalance, the United States is running up a foreign debt of such record-breaking proportions that it threatens the financial stability of the global economy, according to a report released [on January 6, 2004] by the International Monetary Fund.

Prepared by a team of I.M.F. economists, the report sounded a loud alarm about the shaky fiscal foundation of the United States, questioning the wisdom of the Bush administration's tax cuts and warning that large budget deficits pose "significant risks" not just for the United States but for the rest of the world.

[M]any international economists said they were pleased that the report raised the issue.⁴⁴

If such a report were issued about a country wishing to borrow from the IMF, that country's government would obviously need to change its policies. However, "White House officials dismissed the report as alarmist".⁴⁵

I believe it is important to find ways of reducing this asymmetry in obligations I outline some suggestions for this in Chapter Six.

⁴⁴ Elizabeth Becker and Edmund L. Andrews, *I.M.F. Says Rise in U.S. Debts Is Threat to World's Economy*, *NEW YORK TIMES*, Jan. 8, 2004, at A1. The most recent report on IMF Article IV consultations with US authorities highlighted the risks posed by a lowering of lending standards, as occurred recently with "subprime" mortgages; and it suggested that "the same could be happening in other market segments, such as leveraged loans". That report is available at <http://www.imf.org/external/np/ms/2007/062207.htm> (last visited July 4, 2007).

⁴⁵ Becker and Andrews, *supra* note 44, at A1. For a scathing criticism of the Bush-Cheney administration's economic policies, paralleling in several respects the IMF staff report referred to above, see Paul Krugman, *Rubin Gets Shriek*, *NEW YORK TIMES*, Jan. 6, 2004, at A27.

B. Asymmetry in MDB Obligations

The “asymmetry of obligations” complaint applies also in the case of MDB operations, or at least some of them. As in the case of the IMF, the complaint focuses on the disparity between rich industrialized countries and the less developed countries in terms of the obligations that their participation in the MDBs entails. The criticism emerges from two legal and institutional features of the MDBs and their operations. The first of these is the fact that in their policy-based lending—as distinct from the more common project lending—the MDBs insist, by way of loan conditionality, that borrowing countries implement certain economic and financial policies endorsed by the MDBs. That is, MDB financing is made available only if (and as long as) a borrowing member country accepts certain economic and financial policies prescribed by the MDBs. If the borrower rejects those policies, the financial assistance will not be available; if the borrower accepts the policies at first but then abandons them, the financial assistance will not continue.

The second feature from which this criticism emerges is the weighted voting system under which all the MDBs operate. As in the case of the IMF, these two features, acting in tandem, result in an asymmetrical situation: the rich countries are the policy givers because of the system of weighted voting, and the poor countries, as borrowers, are the policy takers; and in some cases the rich countries do not follow the very policies that they insist the poor countries should follow. This asymmetry, it is alleged, is fundamentally unfair.

Is it? Yes. My analysis of the criticism here as it applies to the MDBs is the same as my analysis of it in the context of the IMF. As explained earlier, I believe each of the two features at issue—conditionality and weighted voting—is largely valid and natural in its own right. However, when these two features are combined in the context of actual MDB operations—or at least those operations that involve economic and financial policy prescriptions—they can create problems: they result in blatantly asymmetrical obligations, and this smacks of unfairness and hypocrisy.

However, adding further fuel to the “asymmetry in obligations” criticism as it applies to the MDBs is the fact that there is no mechanism in the context of those institutions for officially illuminating and discussing the mismatch between what is expected of the borrowing member countries and what is practiced by the controlling (non-borrowing) member countries. In this respect the MDBs stand in contrast to the IMF, which at least undertakes an annual review of every member’s economic and financial policies and performance, in accordance with Article IV of the IMF Charter.

I believe it is time to initiate changes in the MDBs that will make the burdens and obligations of economic development more symmetrical. In the next chapter I shall offer some suggestions in this regard, involving both (1) a mechanism for reporting the national economic performance of non-borrowing member countries and (2) a linkage between voting power and national economic performance—with “economic performance” construed broadly to encompass environmental protection and other social aspects of development.

V. SUMMARY: EVALUATING THE CRITICISMS OF GEO CHARACTER, CONTROL, AND REACH

Just as I did at the end of Chapter Four, I provide below a bullet-point summary of my observations regarding the criticisms that have been leveled at the GEOs—this time in terms of their character, control, and reach. In each case, I first restate the “nutshell” form of each “cluster” of criticisms and then give a synopsis of the views discussed in the preceding pages.

Criticism “Cluster” E—Secrecy and Opaqueness

The complaint: “All of the GEOs are closed, non-transparent organizations that (despite the insistence by some of them on transparency in the governance of their member states) practice both documentary secretiveness and operational secretiveness—thereby remaining inappropriately hidden from scrutiny and insulated from external criticism”.

My observations:

- *IMF transparency.* I largely reject the “secrecy and opaqueness” criticism as applied to the IMF (1) because I believe the IMF now provides (with a few exceptions that I shall develop in Chapter Six) adequate documentary information to permit interested parties to know enough about IMF activities to evaluate and criticize them (although naturally, some further transparency in this regard is warranted) and (2) because the level of IMF “operational secrecy” (as distinct from “documentary secrecy”) does not bother me; discussions of sensitive international finance need to be confidential to avoid roiling markets, and the decisions those discussions lead to should in any event be handled by professionals. Having said that, many of the IMF’s member governments are indeed guilty of secrecy and opaqueness.
- *MDBs—more operational transparency needed.* Those who complain that the MDBs operate entirely behind a veil of secrecy are simply wrong. They have built up great momentum toward

transparency. However, more should be done to overcome “operational secrecy”. The “open meetings” principles used in some countries should be adopted, and records of meetings should be made available, along with loan agreements and legal opinions, in ways that are more easily and quickly accessible to the public.

- *WTO—further transparency needed.* Although the WTO has built up momentum toward transparency, its general reputation with the public is so bad that much more should be done, especially to overcome “operational secrecy” concerns. Practices consistent with the same sorts of “open meeting” principles referred to above, as well as prompt public release of records of those meetings, along with legal opinions and the like, should be put in place.

Criticism “Cluster” F—The democracy deficit

The complaint: “Controlled by a handful of rich countries, the IMF and all of the MDBs are unaccountable autocracies in which the people most affected by their operations have far too little chance to participate or exert influence. The WTO is also undemocratic in that it excludes participation by citizens and in that it has no allegiance to political authorities and can therefore impose its will arbitrarily on its member countries. Moreover, the governments of many GEO member countries are themselves undemocratic, so there is no guarantee (and often little likelihood) that those governments will reflect the views of their constituents”.

My observations:

- *IMF accountability issues.* I endorse many aspects of the “democracy deficit” criticism (or “accountability deficit” criticism) as it is directed at the IMF. Granted, some important steps have been taken to blunt the criticism, such as the establishment of the IEO, the expansion of authority of the International Monetary and Financial Committee, and the development of the PRSP process. On the other hand, too little has been done to address other forms of unaccountability that stem from:
 - the weighted voting system (both concentration of power in the hands of a few countries and the dilution of basic votes),
 - the absence of a truly autonomous form of judicial review,
 - weaknesses in Executive Board ability to hold the management and staff accountable, and
 - the process by which the Managing Director is selected.

Moreover, the governments of many IMF member states are themselves undemocratic, and this unaccountability reflects on IMF operations.

- *MDB accountability issues.* Of the five main elements of the “democracy deficit” criticism as applied against the MDBs, I reject some and endorse some. I do not regard the alleged influence that corporate interests have on MDBs to be excessive, although lobbying behavior (and any sort of opportunity for corruption) should of course be strictly regulated. Likewise, I reject the charge that MDBs disregard citizens’ groups and NGOs. Instead, such interests have in fact gained significant access to the MDBs. However, problems remain:
 - The greater NGO access to MDBs does not translate as much as it should into actual influence in MDB decision making;
 - Nor is there yet as effective a form of broad-based objective judicial review of MDB operations as there should be; and
 - Obviously the practice in some MDBs of allowing one member country to monopolize selection of the MDB’s president is illegitimate.

Moreover, as in the case of the IMF, a big problem lies in the fact that the undemocratic character of the governments of many of the MDBs’ member states creates accountability problems for the MDBs.

- *Democracy in the WTO?* I reject some parts of the “democracy deficit” complaint as leveled at the WTO. For one thing, I do not expect or want much democracy in the WTO if democracy means that amateurs have the opportunity to vote on details of international trade regulation. For another thing, the one-state-one-vote structure of WTO governance makes it more responsive to less developed countries than the other GEOs can be (formally). However, I do fault the WTO in several related respects:
 - Qualified NGOs are not permitted adequate participation;
 - As a practical matter, despite the voting system, some large states have more clout than smaller states do, and this sometimes results in smaller states having disproportionately heavy requirements imposed on them;
 - The WTO lacks an effective system to adjudicate claims brought by individuals or groups alleging that the WTO has acted inconsistently with pertinent legal rules;
 - Again, the governments of the WTO member states are themselves in many cases unaccountable to their people.

Criticism “Cluster” G—Mission Creep

The complaint: “As both a legal matter and a practical matter, the IMF and the MDBs have all overstepped their authority and their competence. They have acted *ultra vires* and, in adopting policies on a proliferation of topics, they have severely undercut their ability to fulfill the functions originally prescribed for them”.

My observations:

- *Legal mission creep.* I reject the claim that the IMF or the MDBs have acted *ultra vires*—outside the parameters of their charter authorizations. Those charters are drafted broadly (presumably by design), and the MDBs are themselves given wide scope in interpreting and applying them. Curiously, the only possible exception is where the MDBs have apparently adopted (at least rhetorically) a new “purpose” in announcing poverty reduction as their main mission (the word “poverty” is absent from any of the MDB charters).
- *Practical and ideological mission creep.* The concern carried by the “mission creep” criticism is probably one of practicality and ideology. As applied to the MDBs, I reject the criticism. I favor having MDBs act both as (traditional) development banks and as regulatory agencies—because of the need for such regulation and the muscle that the MDBs can apply—and I largely approve the direction in which they have gone, focusing increasingly on environmental protection and social justice (although they should go further). As for the IMF, I reach the same conclusion and reject the “mission creep” criticism.

Criticism “Cluster” H—Asymmetry in Obligations

The complaint: “The IMF and the MDBs permit their rich member countries to insist that the poor borrowing member countries follow certain policies without pressuring the rich countries to follow those policies themselves—and in fact some of the rich countries consistently fail (indeed refuse) to abide by such policy prescriptions, to the detriment of the world economy”.

My observations:

- *Asymmetry in IMF obligations.* I view this issue as one of the most serious facing the IMF. Although both the weighted voting system and conditionality are largely legitimate in principle on their own, they work together in a way that smacks of unfair-

ness and hypocrisy, especially when some countries (the USA comes to mind) flout the very rules it presses the IMF to impose on borrowing members. This, in turn, undercuts the legitimacy and effectiveness of the organization.

- *Asymmetry in MDB obligations.* This criticism also has validity in the context of MDB policy-based lending operations. In some ways it has a deeper bite because, unlike the IMF, the MDBs have no mechanism (such as Article IV consultations) for officially illuminating and discussing the mismatch between what is expected of the borrowing member countries and what is practiced by the controlling (non-borrowing) member countries.

The Current Front in the Global Development War —How (and Whether) to Reform the GEOs?

In this final chapter, I shall try to complete my picture of the Global Development War. Recall that in Chapter One, I explained what that war is, by examining its antecedents, its nature, who is fighting in it, and where it is being fought. In Chapter Two I focused on how the global economic organizations (GEOs)—the IMF, the World Bank and other multilateral development banks (MDBs), and the WTO—are involved in the Global Development War, and I offered a bare-bones enumeration of the criticisms that have been leveled at those organizations. In Chapter Three, I offered something that I believe is (sadly) missing from many interesting general-audience books on the GEOs—a factual account of those organizations that is simple and straightforward, unadorned with rhetorical and ideological flourish, yet detailed enough to actually understand and evaluate the specific criticisms being leveled at those institutions. And that is what we undertook in Chapters Four and Five, where I offered my own views on various battles now being fought over the GEOs. Those battles—key contests in the Global Development War—can be classified as concentrating on the GEOs’ policies and operations (these formed the subject of Chapter Four) and on the GEOs’ character, control, and reach (these formed the subject of Chapter Five).

In offering my assessments of the eight “clusters” of criticism directed at the GEOs, I promised several times in Chapters Four and Five to provide recommendations for addressing those criticisms that I consider valid and important. Now it is time to make good on those promises. That is what I shall do in the following paragraphs, which present and explain recommendations for reform in all the GEOs—first for the World Bank and the other MDBs, then for the IMF, and finally for the WTO.

I should preface my discussion of the reform of the GEOs, however, with some consideration of an alternative approach hinted at in the title to this Chapter Six: should we not even try to *reform* the GEOs but instead simply *reject* them, by shutting them down entirely? After all, as explained in Chapters Four and Five, a great many criticisms have been leveled at them that, in my view, are valid and important. In light of these, should we just kill off the GEOs?

To do so would be stupid. Killing off the IMF, the MDBs, and the WTO would deprive the international community of the institutional means for achieving some of the great and essential aims of our age. These aims, expressed in technical terms, encompass international monetary collaboration, international economic development, and a fair and effective regime of international trade regulation. But these aims can also be expressed more broadly, as I did in the “Foreword and Synopsis” at the beginning of this book, where I asserted that “the great challenge of our time, . . . on which our collective future depends, is to bridge the dangerous and desperate gap in living conditions of human beings around the world”. I believe we can rise to meet that challenge, but only if we have the institutional means to do so. Despite the shortcomings of the GEOs, some of which are quite severe and need drastic change to overcome, we are much better off with the GEOs—or some form of them—than we would be without them. Expressed differently, we should keep them, not kill them.

I hasten to add, however, that we cannot keep them as they are. So high is the tide of anti-globalist sentiment, and so well-founded are some of the criticisms of the GEOs, that if action is not taken relatively soon to improve them, the GEOs will indeed be killed off. So to my conclusion that we should “keep them, not kill them”, I add my caution that the GEOs must “change or die”. The crucial question is *how* they should be changed.

I. REFORMING THE MDBS

All eight of the “clusters” of criticisms analyzed in Chapters Four and Five apply in some fashion to the World Bank and the regional MDBs. The complaints focus on such issues as bad policy advice, poor project selection and implementation, environmental and human rights shortcomings, distributional unfairness, a lack of transparency, weaknesses in staffing and management, an asymmetry in obligations, “mission creep”, a “democracy deficit”, and more. The reforms that I recommend here would, I believe, help respond to and overcome the criticisms that I find well-founded as directed against the MDBs.

In offering my recommendations, I concentrate first on structural and institutional matters. In particular, I propose that five institutional principles be formally adopted by the MDBs: (1) transparency, (2) participation, (3) legality, (4) competence, and (5) accountability. Several of the principles themselves are already supported, at least in general terms, by the MDBs, as is evident from a survey of the MDBs’ Web sites and other literature. However, my proposal goes considerably further than any of the MDBs would (or arguably could) go now, as will be evident from the description I give in subsections A through E below. In subsection F, I turn

to substantive matters, identifying certain treaties and other international standards that MDB member countries should, in my view, be required to accept, in the sense that adherence to key provisions of such treaties and standards would be a condition of membership.

A. Transparency

The principle of transparency involves making available to the public a very broad range of information about what the MDB has done, is doing, and proposes to do. Abiding by the principle of transparency would involve at least five elements.¹ These are enumerated below. Some of the MDBs are already following several of these practices.

- First, the records of discussions and decisions at the meetings of MDB governing boards would be accessible to the public.
- Second, the loan agreements and related legal documents executed by an MDB with borrowers and other entities would be accessible to the public, not only through the deposit of some such agreements with the UN Secretary-General pursuant to Article 102 of the UN Charter² but also by immediate availability through electronic means.
- Third, all recommendations for the provision of financing—loans, technical assistance, etc.—presented to the MDB’s board of directors, along with documents relating to environmental and social assessment of such operations, would be accessible to the public through electronic means.
- Fourth, the MDB’s governing policy and operational documents (such as the MDB’s policy papers and Operations Manual) would be available, in current form, electronically.
- Fifth, all legal opinions issued by the General Counsel (or by an MDB lawyer serving temporarily in the place of the General

¹ Several of these elements appear also in the recommendations made in 2002 by the International Law Association’s Committee on Accountability of International Organizations at its New Delhi Conference. See INTERNATIONAL LAW ASSOCIATION, REPORT OF THE SEVENTIETH CONFERENCE 772, 775–776 (2002) (discussing basic standard of maximum possible transparency). Those recommendations also include valuable points regarding the need for international organizations to implement other policies for good governance. For a critical discussion of the fact that the meetings of the governing boards of the MDBs are closed to the public and the news media, see Robert Naiman, *U.S. Should Act to Open the Board Meetings of the IFIs*, 6 FOREIGN POLICY IN FOCUS, No. 38, 1 (Dec. 3, 2001), at LEXIS.

² See UN CHARTER, art. 102, para. 1 (“Every treaty and every international agreement entered into by any Member of the United Nations after the present Charter comes into force shall as soon as possible be registered with the Secretariat and published by it”).

Counsel) to a governing board of the MDB would be accessible electronically.

In all these cases, disclosure of and access to information would be subject to appropriate respect for confidentiality where necessary to protect legitimate interests of private parties. In addition, for reasons of practicality, the transparency rules would apply only prospectively to some classes of documents. Moreover, because of the need for candid and lively debate in the early development of projects and policies, internal staff memoranda would typically not be publicly available.

B. Participation

The principle of participation involves providing for influential input by responsible parties before MDB action is finalized. Abiding by the principle of participation would involve at least four elements.

- First, the MDBs would provide mechanisms for soliciting and considering comments from the public during a reasonable period of time before decisions are made by a governing board of the MDB on proposed financing operations or on proposed policy statements or changes.³ This would facilitate the participation by interested parties directly, rather than only through the national government authorities of member countries.
- Second, the MDBs would provide mechanisms also for soliciting and considering comments on environmental assessment and social assessment of specific projects under consideration for MDB financing. This would facilitate public input into the formulation of documents evaluating the likely effects of a proposed project on the physical and human environment, at a stage before such evaluative documents are finalized and submitted to an MDB's board of directors for consideration in connection with a proposal for financial assistance.
- Third, the MDBs would take further steps to integrate non-governmental organization (NGOs) into the establishment of MDB policies and would develop criteria for certifying which NGOs could have direct participation in MDB operations, to the extent that this does not already occur.

³ A model for such a mechanism might be found in the American Administrative Procedure Act applicable to administrative agencies in the USA and particularly in the "notice and comment" procedures and US experience with them. See Richard E. Levy and Sidney A. Shapiro, *Administrative Procedure and the Decline of the Trial*, 51 UNIVERSITY OF KANSAS LAW REVIEW 473, 488–492 (2003).

- Fourth, the MDBs would strengthen the capacity of their field offices to accept comments, complaints, and other views of local residents about MDB operations, and to convey that information to the MDBs' headquarters. This could improve the responsiveness of the MDBs to local populations, whose support is essential for development assistance to work.⁴

C. Legality

The principle of legality involves establishing clear rules and following them. It is partly to observe this principle of legality that the MDBs should, as I suggested above in subsection A (regarding transparency), make public all operational documents and governing policies. However, the principle of legality, as applied in the MDBs, should encompass not only (1) legality of the MDBs' activities but also (2) legality of the membership of countries in the MDBs.

The first of these aspects of legality is not new to the MDBs, although announcing it in charter amendments (as proposed and discussed below) would provide a firm foundation for true judicial review of MDB operations (also discussed below). However, the second of these two aspects of legality—establishing membership requirements for countries to participate in the MDBs—is largely novel. I am proposing the same approach in section II of this chapter with respect to the IMF. Let me explain the proposal as it would apply in the case of the MDBs.

Some MDBs already have membership requirements: membership in the International Bank for Reconstruction and Development (IBRD), for example, requires membership in the IMF (an IBRD Charter provision mandates this), and membership in the Asian Development Bank (AsDB) requires membership in the UN or certain of its agencies (an AsDB Charter provision requires this). However, I propose that the MDB membership requirements be expanded, in much the same way that participation in the General Agreement on Tariffs and Trade (GATT) (through membership in the WTO) was made subject to the “single package” approach agreed upon in the Uruguay Round of trade negotiations (as discussed earlier, in Chapter Three). Under my proposal, membership in an MDB would require that a country accept certain specified obligations in basic (existing) multilateral treaties relating to environmental protection, human rights, and good governance, as well as certain other internation-

⁴ It is perhaps noteworthy that this suggestion, like several others mentioned in this paragraph to broaden public participation in the work of the MDBs, raises a perennial problem: how to balance the two competing values of (1) universality (that is, coherence and harmonization of policies) and (2) sensitivity to special needs and local conditions.

ally accepted standards. I return to this point, and identify the treaties and other standards I am referring to, in subsection IF, below.

D. Competence

The principle of competence, as applied to MDBs, involves the adoption of specific policies and regulations aimed at improving the competence of MDB staff and management, including the competence of those serving on MDB boards of directors. Specifically, I suggest that each MDB adopt regulations directing the president of the MDB to ensure (1) the competence of incoming staff, (2) that competence figures more prominently than seniority as a basis for promotions, and (3) that there is a reduction in the role of nationality in both appointments and promotions.

The first of these points, relating to incoming staff, might be facilitated by the establishment of an international civil service examination like that used in dynastic China⁵ and in some contemporary national civil service and foreign service systems. The second of these points, relating to the grounds for promotions, should involve objective methods of evaluating the quality of the staff member's performance—as is used, for example, in the work of the World Bank's Quality Assurance Group⁶—and should involve a suppression of the “approval culture” that gives undue emphasis to the volume of lending that staff members generate. The third point, calling for a reduction in the role of nationality, would require a careful balancing: on the one hand, there is obvious benefit to be gained from wide geographic, national, and cultural diversity in MDB staffing (a benefit reflected, in fact, in some MDB charters⁷); on the other hand, pressure

⁵ For many centuries, persons wishing to become part of the government bureaucracy in China would study for, and take, a civil service examination testing them over the precepts and application of Imperial Confucianism. An international civil service examination would, in the case of filling management and staff positions in the GEOs, test applicants on matters of economics, finance, international institutions, history, and other pertinent topics (including, as appropriate, technical subjects such as civil engineering, wastewater management, disease control, banking regulation, international law, and so forth).

⁶ The World Bank's QAG initiative was launched in 1996, following internal evaluations showing (according to World Bank documents) “that one third of [World] Bank projects were unlikely to achieve their objectives”; to address that situation, “QAG's mandate was to increase management and staff accountability by conducting real-time assessments of the quality of the [World] Bank's performance in its major product lines”. Other MDBs have also placed increasing emphasis on finding reliable methods of evaluating the quality of projects and of staff performance.

⁷ See, e.g., AsDB Charter, art. 34.6 (requiring that the president of the AsDB, in appointing staff members, “shall, subject to the paramount importance of securing the highest standards of efficiency and technical competence, pay due regard to the recruitment of personnel on as wide a regional geographical basis as possible”).

from national authorities to appoint or promote a person of a particular nationality can severely damage productivity and morale⁸ in a setting in which both need to be high.

In addition to these directives to the MDB president, who is typically responsible for the hiring and management of an MDB's staff, regulations also should be adopted regarding the competence of those persons appointed by national authorities to serve on the boards of directors of the MDBs. It must be clear to those national authorities, and to persons serving on those boards of directors, that appointment to such service is to be based on proven professional qualifications and not on political patronage or connections. To this end, I propose that the MDBs prepare and publish detailed terms of reference describing the duties of such directors and the expected qualifications and experience of persons appointed to serve in that capacity, and that rigorous orientation and training programs for those persons, once they take up their positions at the MDBs, be put in place or strengthened.⁹ Perhaps most important, especially for those MDBs that already give serious attention to the competence of both staff and members of boards of directors, is the need to formalize and publicize MDB standards and policies in this regard, to help respond to the claims of incompetence in staffing and management.

The principle of competence would also involve building a more effective network of cooperation between MDB staff and staff members of other international organizations, NGOs, and national governments. As I noted in Chapter Four, the MDBs could serve as focal points or clearinghouses for expertise that would come from other entities and be brought to bear on the MDBs' work.

⁸ I draw on my own experience as a staff member of the AsDB: pressure in the mid-1980s from Japanese government authorities to hire an unqualified Japanese national undermined the independence and morale of the Office of the General Counsel.

⁹ In an interesting letter to the editor, a former World Bank official has recently offered several criticisms and suggestions regarding the competence and operations of the World Bank's Executive Board, asserting that the Executive Directors are "of highly variable quality", that they are "totally overwhelmed with matters beyond [their] capacity", and that they sometimes face conflicts of interest because of World Bank president Paul Wolfowitz's discarding of the "well-established tradition of not appointing board members to the bank" staff. The writer calls for an "explicit agreement that the board members once appointed are not responsible to their governments but to the institution" and that there be "transparency in the nomination process". See Inder Sud, *The Prime World Bank Issue is Reforming Board's Procedures*, FINANCIAL TIMES, May 19–20, 2007, at 6.

E. Accountability

Accountability, in the context of MDBs, should mean at least two things: (1) accountability of the MDBs themselves to a wide range of interests, including the interests of the public at large; and (2) accountability of all member countries (including non-borrowers) to each other, to the MDBs, and to their own people in managing their national financial and economic affairs. I will address them in reverse order.

1. *Accountability of Member Countries*

In generally endorsing the “asymmetry in obligations” criticism, I pointed out that the IMF Charter requires that IMF members cooperate in Article IV consultations, an annual exercise in which the IMF studies and critiques each member country’s economic and financial policies and performance. As I explained earlier, the reports issued by the IMF following the Article IV consultation are typically made public. In a similar but more narrowly focused manner, I believe all MDB member countries should be required to report annually (and publicly) on their own policies and performance on economic and financial matters.

Specifically, I propose that a standardized set of objective economic and financial criteria, including, in particular, various indices of sustainable human development, be established by the MDBs, based on the kinds of requirements typically found in loan covenants and conditionalities appearing in loan documents between the MDBs and their borrowers. These criteria, in turn, would be used to evaluate the policies and performance of all MDB member countries—borrowers and non-borrowers alike. These evaluations would then be published.

What would be the use of such evaluations? For one thing, they could help blunt the complaint I described above about the mismatch between what is expected of the borrowing member countries and what is practiced by the controlling (non-borrowing) member countries. Second, such evaluations could be used for a more arresting purpose as well: in egregious cases, where a member country departed substantially and chronically from the economic and financial standards previously agreed to, that member’s voting power could be suspended until it corrects its behavior.

This remedial function—triggering a suspension of voting power for poor performance—has analogs in domestic laws governing corporate entities.¹⁰ At the international level, it might be seen as analogous to the pro-

¹⁰ For an example of statutory provisions expressly permitting limited liability companies to specify in their constitutional instruments that voting powers may be restricted

cedure put in place by the Third Amendment to the IMF Charter. As I explained above in Chapter Three, that Third Amendment (proposed in 1990 and formally adopted two years later) provided for a suspension of voting rights of a member that persisted in a failure to abide by its obligations under the IMF Charter. (The IBRD Charter has a somewhat analogous provision for suspension of membership, which entails a suspension of voting rights, in the event that a member country fails to fulfill its obligations to that institution.)

My proposal would be somewhat different by being more objective and more automatic in its application. The system I propose would contain prescribed criteria for measuring a country's economic and financial performance; upon substantial (defined) departure from these criteria, a member's voting power would be suspended.¹¹ As a consequence, the weighted voting system would be modified: a member's usable voting power would be based on its subscription to capital, as under current rules, unless the member's economic and financial performance triggered a suspension in that voting power. Even if such a suspension never occurred, the formal system providing for such an action would help address the "asymmetry in obligations" criticisms—and it would help make all members accountable to each other, to the MDBs, and to their own people for the prudent management of the country's economic and financial affairs.

2. Accountability of the MDBs

I turn now to the second type of accountability—accountability of the MDBs themselves. My suggestions on this point involve three elements. First, MDBs should encourage and facilitate public involvement in decision making. I have already discussed that point above, in discussing the principle of participation.

Second, MDBs should submit to the jurisdiction of some external entity authorized to review the legitimacy of an MDB's action, as judged against its governing instruments. Expressed differently, this means that MDBs should be subject to judicial review. For this purpose, I propose the establishment of an International Tribunal for Multilateral Development

or reduced in certain specified circumstances, see section 151(a) of the Delaware General Corporation Law. For a similar provision, see the Delaware Limited Liability Company Act, in title 6, section 18-502(c) of the Delaware Code.

¹¹ A more nuanced, but more complicated, feature could also be included in the system by providing for *partial* suspension. In this case the amount by which the voting power would be partially suspended would depend on the extent to which the country's economic and financial performance departed substantially from the established criteria.

Banks.¹² Such a tribunal would amount to an expansion of the inspection panels that some MDBs have established (as discussed earlier) in order to determine whether those institutions have acted consistently with the policies that they have announced. Such a tribunal would also have appellate jurisdiction over the governing boards of the MDBs in matters of charter interpretation. Judges for the tribunal could be selected mainly by the MDBs themselves—perhaps two nominated by each participating MDB and two by the president of the International Court of Justice.

Providing for such judicial review would introduce some checks and balances of the sort that most national governmental structures have, by adding to the executive and legislative functions (carried out by the MDBs' management and governing boards, respectively) a judicial function responsible for checking the legality of the exercise of the other two functions. The International Tribunal for Multilateral Development Banks would accept complaints from individuals or groups alleging that an MDB had acted inconsistently with its own charter or its own announced policies and principles—including the other institutional principles discussed above and the substantive principles that I discuss in the next subsection.

A third suggestion for injecting more accountability in MDB operations seems self-evident: terminate the practice of permitting any single country to monopolize the selection of an MDB president. As noted earlier in this book, the USA holds, in effect, such a monopoly over the selection of the World Bank president, and Japan has the same over the selection of the AsDB president. Surely this would strike most objective observers as absurd. Even if some claim could be made as a substantive matter that such a monopoly is justified by the fact that the World Bank could not be viable without the support of the USA (or the AsDB without Japan's support), the practice of giving any one country a special privilege of selection creates such a jarring mismatch with the notions of multilateralism and participatory fairness as to make that practice wholly untenable. As a matter of public relations, it is a recipe for disaster. And as a matter of effectiveness, the recent experience with Paul Wolfowitz speaks for itself. As a key architect of policies that much of the world found abhorrent, Wolfowitz would not have had a chance of getting named World Bank president but for the Bush-Cheney administration's exercise of the decades-old US monopoly over that process. Little surprise, then, that Wolfowitz had such difficulty

¹² This is a different approach from the one suggested by Eisuke Suzuki and Suresh Nanwani in their article *Responsibility of International Organizations: The Accountability Mechanisms of Multilateral Development Banks*, 27 MICHIGAN JOURNAL OF INTERNATIONAL LAW 177 (2005). Those authors, former colleagues of mine at the AsDB, suggest allowing each MDB's administrative tribunal to expand its functions by serving as a special tribunal. See *id.* at 224–225.

securing broad support for his initiatives at the World Bank. The circumstances of his appointment to that position put him in too big a hole to climb out of; even a pleasant and cooperative leadership style could scarcely have offset this disadvantage enough to make him an effective president.

In my view, the World Bank membership should have insisted that upon Mr. Wolfowitz's messy removal from office, a new president would be selected in a more open and multilateral process. Despite pressure in this regard from many fronts,¹³ the Bush-Cheney administration moved quickly to claim and exercise again its monopoly power.

F. Substantive Norms and Standards

Having concentrated above on structural and institutional suggestions for improving the MDBs, I now turn to a different type of proposed reform. This suggestion focuses on the substantive international legal obligations that MDB member countries undertake.

In discussing the principle of legality, above, I proposed the establishment of a new type of membership requirement for countries to participate in the MDBs—a requirement that member countries accept certain key provisions of fundamental treaties. To this end, the MDBs' charters could be amended to incorporate by reference those treaty provisions. A similar approach was taken in the TRIPs Agreement (Agreement on Trade-Related Aspects of Intellectual Property Rights) emerging from the Uruguay Round of trade negotiations: by becoming a party to that agreement, a country agrees to comply with certain specified provisions of various intellectual property treaties.

¹³ One of the numerous calls for reform appeared in a letter to the editor bemoaning the fact that “[t]here is no place for the developing world in the matter of selection of the heads of the World Bank and the International Monetary Fund. The officials of these two institutions preach ‘good governance’ to the rest of the world, but the manner in which their own senior functionaries are appointed makes a mockery of the need for transparency that is at the core of any form of good governance”. E. A. S. Sarma, *World Bank Has Greater Problems than Wolfowitz*, FINANCIAL TIMES, May 8, 2007, at 9. Another call for reform came from Joseph Stiglitz: “It is time for the US to give up its hold on picking the president of the [World Bank] and for Europe to give up its grip on choosing the president of the International Monetary Fund. Had the process of picking the [World Bank] president been truly democratic and fair in the first place, it is almost certain that Paul Wolfowitz would never have been selected”. Joseph Stiglitz, *The Wolfowitz Affair and Its Consequences*, FINANCIAL TIMES, May 7, 2007, at 9. For a similar view, see *Damage Control*, ECONOMIST, Apr. 21, 2007, at 12–13: “Today’s system of divvying up top international jobs by nationality (the [World Bank’s] president is always American; the IMF’s boss is always a European) should be abolished in favour of a competitive global search”.

Incorporating by reference (into the MDBs' charters) certain other treaty provisions would not only bear on eligibility of a country to *become* a member, it would also impose a continuing requirement on each member country to adhere to those treaties in order to *remain* a member. The overall aims in imposing this requirement would be (1) to announce definitively that the MDBs themselves, and their members, are committed to the key purposes of the incorporated treaties—regarding, for example, environmental protection, fundamental human rights, and responsible governance—as well as (2) to provide a normative basis for imposing requirements on member countries in the form of loan covenants and conditions. Such an initiative might have another, less direct effect—further inducing compliance with the treaties to which most MDB member countries had already consented to be bound.¹⁴

What substantive principles would be drawn from (existing) treaties? I propose that key substantive provisions of the environmental, human rights, and governance treaties listed in Box 6.1 be incorporated by reference in amendments to the MDB charters.

In addition, I propose that the MDBs adopt or endorse, through actions of their governing boards, certain other substantive principles, mainly economic or financial in nature, that MDB member countries would be expected to incorporate (in a phased manner if necessary) into their own regulatory and legal frameworks. These principles would be developed by international entities with subject matter expertise, and they could include the instruments listed in Box 6.2.

¹⁴ If, as a result of my proposal, treaty regimes were given a shot in the arm, it would be a gain for what has been referred to as “liberal internationalism”—an approach to international cooperation based on multilateral treaties among nation-states. See Kal Raustiala, *The Architecture of International Cooperation: Transgovernmental Networks and the Future of International Law*, 43 VIRGINIA JOURNAL OF INTERNATIONAL LAW 1, 2–3 (2002) (discussing liberal internationalism). However, another of the proposals I have made above (in subsection IE of this chapter) is to build a more effective network of cooperation between MDB staff and staff members of other international organizations, NGOs, and national governments. This would tend to boost what has been referred to as the “transgovernmental network” model. Raustiala, *supra*, at 4–5. Some commentators fear that this latter model might be a dangerous substitute for traditional multilateralism, but others predict that the two approaches—liberal internationalism and transgovernmentalism—will complement each other. *Id.* at 5–6. For a “history of transgovernmentalism”, see Anne-Marie Slaughter, *The Accountability of Government Networks*, 8 INDIANA JOURNAL OF GLOBAL LEGAL STUDIES 347, 350–355 (2001). A friend of mine has recently written an interesting article about the applicability of such transgovernmentalism to international criminal law. See Jenia Iontcheva Turner, *Transnational Networks and International Criminal Justice*, 105 MICHIGAN LAW REVIEW 985 (2007).

Box 6.1: Treaties for Linkage to MDB Membership Obligations

- Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) (1973)
- Vienna Convention for the Protection of the Ozone Layer (1985), and pertinent provisions of the Protocols thereto and of the Amendments to those Protocols
- Basle Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal (1989)
- Convention on Biological Diversity (1992)
- Climate Change Convention (1992)
- Kyoto Protocol on Global Warming (1998)
- International Covenant on Civil and Political Rights (1966)
- International Convention on the Elimination of All Forms of Racial Discrimination (1966)
- Convention on the Elimination of All Forms of Discrimination Against Women (1979)
- Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (1984)
- Convention on the Rights of the Child (1989)
- Organization for Economic Cooperation and Development (OECD) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (1997)

Box 6.2: Guidelines and Principles for Linkage to MDB Membership Obligations

- the Basle guidelines on capital adequacy
- the Basle core principles on banking supervision
- the OECD guidelines on corporate governance
- the OECD guidelines for multinational enterprises
- the guidelines for the treatment of foreign direct investment, adopted by the Development Committee of the World Bank

G. Charter Amendments

I have proposed in the preceding paragraphs that MDB charters be amended to include various new provisions. To reiterate, the main points to be included in the amendments are:

- definition and adoption of institutional principles—transparency, participation, legality, competence, and accountability;
- environmental protection—general obligation and incorporation of key treaty provisions;

- human rights and social dimensions of development—general obligation and incorporation of key treaty provisions;
- governance—general obligation and incorporation of key treaty provisions;
- voting power—modification of weighted voting system in the MDBs in case of a member country’s egregious departure from established standards of economic and financial polices and performance;
- judicial review—cross reference to the new statute establishing an International Tribunal for Multilateral Development Banks.

In the Appendix to this chapter, sample language appears that might be used in effecting the sorts of amendments summarized above. For that purpose, I have used the AsDB Charter as a model. The specific format I have proposed in the Appendix is a “Draft Protocol to the AsDB Charter”.

II. REFORMING THE IMF

I have identified in Chapters Four and Five several criticisms of the IMF that I generally endorse. They focus on matters of distributional and social injustice, the IMF’s “democracy deficit”, and “asymmetry in obligations”. Although some critics of the IMF would assert that these criticisms provide sufficient reason for doing away with the IMF, on grounds that it is so deeply flawed as to be irreparable, I do not take that view. Instead, as noted in the introductory comments to this chapter, I believe the IMF, as well as the other GEOs that I scrutinize in this book, are worth saving but need important reforms. I recommend several such reforms here.

First, though, it is worth pausing to note the various types of work that the IMF does that have *not* attracted substantial criticism. As noted above in my “nutshell” account of the IMF in Chapter Three, although its lending operations are the most visible aspect of the institution’s activities, the IMF carries out numerous other functions. These include providing technical assistance and conducting annual Article IV consultations with each member country, as well as undertaking an enormous volume of valuable research. These activities should continue (with ongoing scrutiny, of course, as to how they might be improved).¹⁵ Indeed, under the reforms I outline below, each of them would assume a somewhat more prominent place in IMF operations.

¹⁵ For a critical assessment of what I consider one of the most important forms of IMF technical assistance—helping prepare banking legislation—see generally Gary A. Gegenheimer, *Technical Assistance or Excessive Technicality? A Critique of the International Monetary Fund’s Model Commercial Banking Law for Transition Economies*, 20 ANNUAL REVIEW OF BANKING LAW 143 (2001). According to that assessment, the model banking law that

It is also important to bear in mind the very substantial transfer of resources from rich countries to poor countries that the IMF has encouraged and presided over. A first example of this came in the 1970s. A political compromise struck in the negotiations of the Second Amendment to the IMF Charter provided that the IMF would sell 50 million ounces of gold, with the profit from half that amount earmarked for less developed countries (LDCs). Part of the profit was to be remitted to each such country directly, and part was to be set aside for the benefit of specified, especially needy less developed countries. To that end, the IMF established a Trust Fund separate from its other holdings. Loans made by the IMF from that Trust Fund carried a highly concessional interest rate—one half of 1 percent. In the late 1970s and early 1980s a total of special drawing rights (SDR) 2.9 billion was made available to LDCs from that Trust Fund.

In a similar vein, special funding was made available again beginning in the late 1980s for the benefit of LDCs. The Structural Adjustment Facility (SAF) and the Enhanced Structural Adjustment Facility (ESAF) were established in March 1986 and December 1987, respectively, to provide assistance on concessional terms to low-income IMF member countries facing protracted balance-of-payments problems. A great deal of money—SDR 12.3 billion already as of 2003—has been disbursed by the IMF in loans made under the SAF or the ESAF, or under the Poverty Reduction and Growth Facility (PRGF), which in the late 1990s became the successor to the ESAF. Combining these figures for Trust Fund loans (SDR 2.9 billion) and SAF/ESAF/PRGF loans (SDR 12.3 billion) and expressing them in US dollars at the current SDR value (roughly SDR1 = US\$1.50) yields a total of nearly US\$30 billion that has been provided to LDCs on very attractive terms—illustrated by the current PRGF terms: an interest rate of one half of 1 percent, a grace period of about five years before repayments are due, and then and a repayment period stretched over about five years.

In short, the IMF has performed several functions that are largely uncontroversial and that have benefited the LDCs that make up the bulk

has been developed by the IMF and used in helping authorities in various transition economies write national banking legislation “is seriously flawed” because it emphasizes form over substance and grants excessively broad authority to banking supervisory authorities to shut down banks. *Id.* at 145. Based on my own involvement in this form of technical assistance over the past eighteen years (providing legislative advice to central bank and finance ministry officials in Namibia, Jordan, Mongolia, Tajikistan, Kazakhstan, Kyrgyzstan, and the Maldives), I disagree with this assessment, especially the latter point. For my views on the reasons for providing broad authority to banking supervisory authorities to shut down insolvent banks, see Robert Lee Ramsey and John W. Head, PREVENTING FINANCIAL CHAOS: AN INTERNATIONAL GUIDE TO LEGAL RULES AND OPERATIONAL PROCEDURES FOR HANDLING INSOLVENT BANKS 14–16, 31–38 (2000).

of its membership. It is partly to strengthen the ability of the IMF to perform those important functions, as well as to overcome some of the shortcomings in its structure and its lending operations, that I offer below several specific suggestions for bringing reform both (1) to the IMF itself and (2) to the relations the IMF has with its member countries.

A. Structural and Operational Changes in the IMF

The following enumeration of ten specific proposals for reform emerges from my analysis in Chapters Four and Five regarding those criticisms that I generally endorse regarding the IMF. The list also draws in part from the valuable work done by Professor Daniel Bradlow¹⁶ and Dr. Ngaire Woods referred to earlier, as well as some other thoughtful observers. All of the changes outlined below would address the “democracy deficit” criticism; the last change suggested below would also address the “asymmetry in obligations” criticism. (My suggestions for addressing the “distributional and social injustice” criticism appear in subsection IIB, below).

First, the IMF management could create, and submit to the Executive Board for formal approval, a relatively comprehensive Operational Manual, similar to that used in the World Bank, compiling in one place the various policies that have been adopted by the Executive Board and the Board of Governors. These would most effectively appear in two categories: (1) policies governing the IMF’s internal operations; and (2) policies that IMF members are expected to follow in their own financial, economic, and structural matters and in their relations with the IMF. The first category would include IMF policies on transparency (of the IMF itself), the terms applicable to various types of financial facilities available to member countries, the new guidelines on conditionality, rules on consulting with civil society groups, procedures under which the IMF carries out regional and global economic and financial surveillance (see subsection IIC1 of Chapter Three), policies governing IMF cooperation with the World Bank and other institutions, and so forth. The second category would include policies regarding the minimum standards that IMF member countries should be required to meet in a variety of areas crucial to the well-being of their people. I describe this second category more fully in subsection IIB below.

¹⁶ All quoted passages from Professor Bradlow in the following pages are drawn from the three articles cited in Chapters Four and Five, namely: Daniel D. Bradlow, *Should the International Financial Institutions Play a Role in the Implementation and Enforcement of International Humanitarian Law?*, 50 UNIVERSITY OF KANSAS LAW REVIEW 695 (2002); Daniel D. Bradlow, *Rapidly Changing Functions and Slowly Evolving Structures: The Troubling Case of the IMF*, 94 AMERICAN SOCIETY OF INTERNATIONAL LAW PROCEEDINGS 152, 153 (2000); Daniel D. Bradlow, *Stuffing New Wine Into Old Bottles: The Troubling Case of the IMF*, 3 JOURNAL OF INTERNATIONAL BANKING REGULATION 9 (2001).

Second, the Executive Board could adopt, after consultation and an opportunity for public comment, formal decisions that would determine and announce certain aspects of the IMF's constitutional authority. Specifically, these decisions would (1) define the scope of the IMF's mandate, so it will be easier (in Professor Bradlow's words) "for outsiders to understand why the IMF is willing to address certain issues but not other issues" and (2) construe the meaning of Article IV, Section 3(b) of the IMF Charter, which provides that in its economic and financial surveillance activities the IMF shall "respect the domestic social and political policies of members".

Third, the IMF management could put in place formal procedures to ensure that IMF staff working with government authorities interact with a range of persons and agencies—that is, that IMF staff not limit such interactions only to authorities of the central bank or ministry of finance in those countries requesting financial assistance from the IMF. The formal procedures in this regard might call for consultations with, as Professor Bradlow suggests, "government ministries whose budgets will be affected by the specific actions [the IMF] is advocating, with the legislators who will need to pass the laws [if any] that follow from the IMF's proposed policies, and with [certain relevant] actors in civil society".

Fourth, the Board of Governors could revise the structure of the Independent Evaluation Office to make the Independent Evaluation Office (IEO) more genuinely independent of the IMF Executive Board. For example, the following modifications might be considered:¹⁷

- providing for appointment of one or more IEO panel members by some entity (or entities) other than the IMF Executive Board;
- providing procedures by which cases alleging IMF breach of its own policies or of the IMF Charter could be brought more directly before the IEO without review of the IEO's work program by the IMF Executive Board;
- creating (perhaps for that purpose) a position of ombudsman who (in Professor Bradlow's words) "has the power to receive and investigate complaints from any person, organization, or state that feels that the IMF has not been acting in conformity with its mandate";

¹⁷ For several of these points I draw liberally from writings by Carol Welch, who has written widely on GEO issues from the perspective of her work as US Coordinator for the UN's Millennium Campaign and her work at Friends of the Earth, where she served as Director of the International Program, in which she oversaw that organization's campaigns on international financial institutions, trade, and corporate accountability issues.

- requiring that the IEO's hearings (although not all of its meetings) be open to the public (subject to valid confidentiality concerns); and
- requiring that either the IMF's management or its Executive Board must issue a public response to each recommendation emerging from an IEO evaluation.¹⁸

Fifth, the Board of Governors could continue to place more responsibilities with the International Monetary and Financial Committee—beyond those that have already been given to it recently (as described above in subsection IID of Chapter Three)—to transform it even more “into a decision making council for the major strategic orientations of the world economy”.¹⁹ In addition, its membership might be expanded to enhance further its ability to reflect the broad interests of its shareholders.

Sixth, the membership of the IMF could act promptly to approve the proposal made recently to revise the IMF Charter in a way that would substantially increase the basic votes. (Current IMF statements project that this is on track to be accomplished in 2008.) The aim of such a change would be to restore the degree of equality among members (despite the weighted voting system) that was envisioned by the IMF's creators.

Seventh, the membership of the IMF could also act promptly to revise the quota allocations among countries. Recall that the quotas of four countries—China, Korea, Mexico, and Turkey—were increased recently on an *ad hoc* basis. A more comprehensive adjustment has been proposed, at least in general terms, by former Managing Director Rodrigo de Rato. Such an adjustment is overdue. If the sixty-year-old domination of the IMF by a handful of countries is to be regarded as legitimate, a strong justification should be offered; and if such a justification cannot be offered, other coun-

¹⁸ Some movement in this direction was taken recently. In 2006, a three-person panel of external evaluators issued a report on their findings regarding the IEO. One recommendation was for greater follow-up by the Executive Board in response to IEO reports. That recommendation was, according to a statement summarizing Executive Board views on the external evaluator's report, “welcomed” by the Executive Board. The statement also said that the Executive Board “considered that the Panel's call for a more systematic approach for following-up on and monitoring the implementation of IEO recommendations approved by the Board should be further examined”. See <http://www.imf.org/external/np/sec/pn/2006/pn0667.htm> (last visited July 7, 2007). It is possible that such further examination will lead to a requirement that the Executive Board issue a public response to recommendations emerging from the IEO.

¹⁹ Michel Camdessus, *The IMF at the Beginning of the Twenty-First Century: Can we Establish a Humanized Globalization?*, 7 *GLOBAL GOVERNANCE* 363, 369 (2001). It was under M. Camdessus tenure as Managing Director of the IMF that the IMFC's role was augmented beginning in the late 1990s.

tries should be permitted to have greater influence if they are willing to contribute the resources necessary to warrant such influence.²⁰

Eighth, in a change that could add to the IMF's transparency as well as cut the "democracy deficit", the IMF could (in Professor Bradlow's words) "mov[e] . . . away from its current practice of making decisions on the basis of consensus to making decisions on a basis that better reveals the preferences of those states which will be most affected by the decisions". Several specific proposals have been offered in this respect. Professor Bradlow has suggested that the IMF might "require separate votes by those executive directors who represent consumer countries and those who represent supplier countries", and then "[a]ny decisions would only be adopted if it [*sic*] commanded a majority of both groups". In a similar vein, thirty-five European NGOs joined forces in mid-2006 to call for a combination of the present weighted voting with a one-country-one-vote system. Dr. Ngaire Woods has made a similar proposal, and other suggestions have also been made for different forms of "double-majority" requirements. The best of such suggestions should be selected and implemented.

Ninth, the membership of the IMF—and particularly the European members—could change the method for selecting a Managing Director. In the same month that I am writing these words, the IMF is once again following the pattern set over sixty years ago, by which the European member

²⁰ The former Secretary of the IMF, Leo Van Houtven, is among the numerous people who have recommended that the allocation of quotas be revised in order to obtain more equity in voting power. Naturally, the devil will be in the details. European countries might object to his observation that the EU quota and voting power could legitimately be reduced by "the exclusion of intra-EU trade from the quota calculations, which would be appropriate for an economic union". This would reduce EU voting power by approximately nine percentage points (it is now around 32 percent). See Leo Van Houtven, *Rethinking IMF Governance*, FINANCE & DEVELOPMENT, Sept. 2004, at 18–19. Van Houtven has also suggested having a single EU chair at the Executive Board, which would help reduce the size of the Executive Board from twenty-four chairs to around eighteen. Two former IMF Managing Directors have reacted favorably to the idea of consolidating EU representation into a single chair on the Executive Board. See *How Should the IMF Be Reshaped?*, FINANCE & DEVELOPMENT, Sept. 2004, at 27, 29. For an intriguing approach to the question of how quota reallocation should occur more generally, and suggesting an approach based on the works of legal and political philosopher John Rawls (author of the notion of "justice as fairness"), see Abbas Mirakhor and Iqbal Zaidi, *Rethinking the Governance of the International Monetary Fund*, IMF WORKING PAPER WP/06/273 (Dec. 2006). According to the head of the IMF committee appointed to work on quota reform, "[t]he goal is to develop a formula that is both simpler and more transparent than the present approach, and which appropriately captures members' weight and role in the global economy". *IMF Quota Reform a Complex, Two-Year Process*, IMF SURVEY, Feb. 26, 2007, at 52. For other views on reforms in the IMF voting structure, see chapters 9 and 10 in *REFORMING THE IMF FOR THE 21ST CENTURY* (Edwin M. Truman ed., 2006).

countries effectively monopolize the selection of a IMF Managing Director. Numerous calls were made, upon the announcement of Rodrigo de Rato's sudden and baffling resignation, for a more democratic process that reflects today's realities.²¹ Those calls seem to have been ignored—just as were the calls that were made (at nearly the same time) to improve the process for selecting a new World Bank president in the wake of the ignominious departure of Paul Wolfowitz from that position (a matter discussed in section I of this chapter).

Tenth, in order to help address the “symmetry in obligations” criticism, the membership could revise the IMF Charter to link some portion of each member's voting power to its economic and financial policies and performance. This is a rather radical proposal, of course, and I made one similar to it above in the context of the MDBs. Under this approach, if an IMF member country were to depart substantially and chronically from economic and financial policies agreed to with the IMF, that member country's voting power could be suspended until the member country corrects its behavior. Such agreements with the IMF regarding economic and financial policies would probably come in the context of Article IV consultations for those member countries that do not borrow from the IMF; and for those member countries that do borrow from the IMF, the agreements could come in the context of Article IV consultations or in the context of the discussions leading to a letter of intent or a memorandum of economic and financial policies. (Borrowing member countries, of course, already face the consequences of an interruption of disbursements under their IMF loans if they fail to hew to the agreed-upon policies.)

As noted earlier, this possible remedy—suspension of voting power—has a clear precedent in the IMF. The Third Amendment to the IMF Charter, forced on most of the membership by the USA in the early 1990s, calls for a suspension of a member country's voting rights in certain cases of its failure to repay loans to the IMF on time.²² Like the addition of that

²¹ See, e.g., *A Chance to Exert Global Leadership*, FINANCIAL TIMES, July 5, 2007, at 12 (calling on Europe “to show some leadership” in helping create “an open and fair succession process”, on grounds that the IMF “is too important for its leadership to be regarded as a political perk”). See also Krishna Guha and Eoin Callan, *Surprise Rato Decision to Step Down Early at IMF*, FINANCIAL TIMES, June 29, 2007, at 5 (referring to the push among less developed countries for reform of the selection process). Dr. Ngaire Woods reports that a working group drawn from both World Bank and IMF Executive Boards proposed in 2001 that “there should at least be clear criteria for identifying, nominating, and selecting qualified candidates and that there should be transparency in the subsequent process” but that “[s]o far these proposals have gone nowhere”. Ngaire Woods, *THE GLOBALIZERS: THE IMF, THE WORLD BANK AND THEIR BORROWERS* 211 (2006).

²² See John W. Head, *Suspension of Debtor Countries' Voting Rights in the IMF: An Assessment of the Third Amendment to the IMF Charter*, 33 VIRGINIA JOURNAL OF INTERNA-

new suspension remedy in the early 1990s for failure to repay IMF loans, the addition of this suspension remedy for failure to live up to the accepted economic and financial policies would require formal amendment of the IMF Charter—presumably in Article IV, Section 3 (on the basis of which the Article IV consultations take place), and perhaps with a cross-reference there to Article XXVI, Section 2(b) (referring to suspension of voting rights).

B. Enhancing Competence in National Governance

The ten specific reform proposals summarized above relate to structural and operational changes in the IMF. A second set of suggested reforms would focus not on the IMF itself but instead on the IMF's relationship with its member countries—and, in particular, on how the IMF can help enhance economic stability in the world by (1) demanding more of its member countries and (2) also providing more *to* them in the way of technical assistance.

My views regarding the role of the IMF vis-à-vis its member countries rest on three related points:

- First, today's world requires dramatically more competent national governance, especially in the areas of economics and finance, than it ever has before.
- Second, today's world has many national governments that are corrupt and incompetent.
- Third, the best hope for rectifying this mismatch—that is, the mismatch between (1) the need for better national governance and (2) the reality of wretched national governance—lies in cooperative action through multilateral institutions.

The first of these three points, that national governments have a higher duty of care now than ever before to manage their economies competently, was expressed by former IMF Managing Director Michel Camdessus a few years ago:

Whether a country is large or small, [economic] crises can now become systemic through contagion. Domestic economic policy must take into account its potential worldwide impact; a duty of universal responsibility is incumbent, making each country responsible for the stability and quality of world growth. . . .

TIONAL LAW 591, 630–635 (1993) (explaining the details of the Third Amendment) and 639–640 (noting the only grudging acceptance of the Third Amendment by most less developed countries).

This adds a new dimension to the duty of excellence and rectitude that is required of every government in the management of its economy. Globalization is a prodigious factor in accelerating and spreading the international repercussions of domestic policies. Thus, the IMF emphasizes three points [in dealing with its member states]: rigor and transparency, growth centered on human development, and government reform.²³

The second of the three points I mentioned above, that many national governments are either corrupt or incompetent (or both), is reflected in this scathing broadside attack (issued by a Ghanaian) on the quality of governance in much of Africa:

[G]overnment, as it is understood in the West, does not exist in many parts of Africa. What exists is a Mafia state—government hijacked by crooks, thugs, and gangsters, who use the instruments of state power to enrich themselves, their cronies, and their tribesmen. All others are excluded from the government. The ruling elite perceives government, not as a vehicle for reform or as a way to serve the people, but as a way to fleece the people. The institutions of the state have been taken over by the ruling elites, corrupted, and their functions perverted to serve the interests of the elite. Practices such as meritocracy, rule of law, property rights, transparency, and administrative capacity have vanished.²⁴

What, then, is to be done? If both of these points are correct—(1) that our world needs, more than ever before, national governments that are competent, and (2) that our world suffers from many incompetent or cor-

²³ Camdessus, *supra* note 19, at 364. I might qualify the point M. Camdessus makes in the first sentence quoted above by suggesting that economic crises could *always* have become systemic through contagion. The new aspect that places on national governments a duty of care that is now higher than ever before is the *speed* with which contagion spreads, thanks to modern technologies of communication. I am indebted to Professor Robert Hockett for noting this important point.

²⁴ George B. N. Ayittey, *How the Multilateral Institutions Compounded Africa's Economic Crisis*, 30 LAW & POLICY IN INTERNATIONAL BUSINESS 585, 589 (1999). Ayittey, highly critical of IMF and World Bank operations in Africa, calls for these institutions to support indigenous initiatives of the people (not the governments) of Africa, on grounds that political change must precede economic and institutional reform there. *Id.* at 597–600. Ayittey expressed some of these same points also in 2004, saying that most IMF-sponsored reforms in poorly run countries have “amounted to reorganising of a bankrupt company [that is, the country] and placing it, together with a massive infusion of new capital, in the hands of the same incompetent managers who ruined it in the first place [that is, the country's same government]”. George B. N. Ayittey, *The Rule of Big Men or the Rule of Law?*, ECONOMIST, July 17, 2004, available at 2004 WL 620167512.

rupt national governments—what can be done to remedy the situation? I cast my vote for multilateral solutions. In my view, the best hope for the future in terms of preventing global economic storms or meltdowns, or at least limiting the damage they cause, lies with global efforts to improve the competence and effectiveness of national governments. I endorse the views expressed by Professor Harold James of Princeton. After tracing the IMF's gradual expansion of emphasis into four new areas—military spending (by using conditionality to suppress national government outlays for military buildups), corruption, democracy, and transparency of national governments—Professor James makes this observation:

The gradual extension of the IMF into these areas [of military spending, corruption, democracy, and transparency] is an immediate result of the new consensus about economic practice and of a new world political order that it has helped to produce. But it reflects something more profound—a realization increasingly shared throughout the world that the world economy, and world institutions, can be a better guarantee of rights and of prosperity than some governments, which may be corrupt, rent-seeking, and militaristic. Economic reform and the removal of corrupt governments are preconditions both for the effective operation of markets and for greater social justice. Indeed, these two results, far from being contradictory as some critics imagine, are complementary.²⁵

In my view, these three points—the increased need for competent governance, the prevalence of incompetent national governments, and the possibility of relying on multilateral solutions and institutions—yields the following principle to guide the IMF in coming years: the IMF should serve as a vehicle by which the international community both (1) insists on the adherence by all countries to certain minimal standards and (2) provides help for those countries whose governments cannot make the grade.

I begin with the first of these. I believe the IMF (as well as the MDBs and the WTO) should impose minimum standards on member countries in a variety of areas, including good governance, environmental protection, human rights, financial prudence, and investment guidelines. Such minimum standards already exist, of course, either in the form of treaties that scores of countries have already expressly accepted or in the form of guidelines developed by international entities with recognized expertise. I listed twelve such treaties earlier in this chapter, in Box 6.1, when I made a similar proposal in respect of the MDBs. The same list of twelve treaties applies here.

²⁵ Harold James, *From Grandmotherliness to Governance: The Evolution of IMF Conditionality*, FINANCE & DEVELOPMENT, Dec. 1998, at 47.

In addition to those widely accepted treaties, various sets of guidelines and principles also set forth international minimum standards that I believe the IMF should require its members to adopt and observe. These include the several sets of Basle, OECD, and World Bank guidelines and principles that I listed above in Box 6.2.

In addition, I recommend that the three sets of IMF-generated standards listed in Box 6.3 should also be applied:

Box 6.3: Additional Standards for Linkage to IMF Membership Obligations

- the IMF's Special Data Dissemination Standard;
- the IMF's Code of Good Practices in Fiscal Transparency; and
- the IMF's Code of Good Practices on Transparency in Monetary and Financial Policies.

I believe the IMF should have some role in encouraging its member countries to accept and abide by the core obligations set forth in all these—that is, in the treaties, guidelines, and other standards referred to above. I think I am not alone in this view. In a speech delivered at Oxford University shortly after leaving his position as IMF Managing Director, Michel Camdessus offered a long list of objectives that the IMF should focus on, through its surveillance activities and through programs it designs, to help countries “realize their global responsibilities”. In addition to calling for “high-quality growth [that] . . . emphasizes equity, poverty alleviation, and empowerment of the poor . . . [and that also] stresses protection of the environment and respects national cultural values”, Camdessus enumerated the following issues with which the international financial institutions should concern themselves:

- encouraging participatory democracy;
- encouraging transparency, openness, and accountability;
- combating collusion, corruption, and nepotism;
- suppressing arms transfers and military expenditures;
- emphasizing poverty alleviation as the “centerpiece of economic policy”;
- promoting free markets and trade liberalization;
- providing for social safety nets; and
- devoting public spending to education and health care.²⁶

²⁶ Camdessus, *supra* note 19, at 364–367.

Camdessus did not specify in his speech how the IMF should encourage its member countries to pursue these objectives. However, I would offer the following ideas.

First, it could be made a requirement of IMF participation—through an additional protocol or through an amendment to the IMF Charter if necessary—that a country accept the core obligations in all the treaties and guidelines that I have listed above, along with standards designed to promote distributional and social justice. Under this approach, any country that is not already an IMF member would be barred from membership until it accepted those core obligations; and each current member country would have its membership suspended until it did so as well. I suggested a similar approach, with somewhat more detail, in my recommendations in section I of this chapter for reforming the MDBs.

Second, in designing mechanisms by which the IMF could encourage its member countries to abide by the obligations set forth in those treaties, guidelines, and standards, policy makers should take note of the distinction that Professor Bradlow has made between implementation and enforcement. The scope of “implementation”, under Bradlow’s distinction, involves having international financial institutions “us[e] their technical assistance and information gathering capacity” to collect data and share it with specialized agencies having subject-matter competence. An “enforcement” role, by contrast, would be much broader—involving, for example, loan conditionalities that would result in a suspension of financial assistance if the country acted in breach of its commitments.

Using that distinction between implementation and enforcement, I would then suggest a bifurcated role for the IMF. In respect of all the core obligations referred to above, the IMF could have an implementation role—that is, a role that would involve collecting information, making it public, sharing it with other specialized agencies having competence in the subject matter of the treaty, guidelines, or standards at issue, and thereby bringing the pressure of public opinion (favorable or unfavorable, as the case may be) on how well a country has honored its obligations in those respects. But the IMF would also have an enforcement role with respect to those few treaties, guidelines, and standards that bear most directly on the *economic* well-being of the member country—including, for example, the OECD anti-bribery convention and the Basle principles on banking supervision and capital adequacy.

Lastly, what would the enforcement role of the IMF involve? I suggest consideration of two types of such an enforcement role. The first is familiar: Condition a member country’s access to IMF financial assistance on the

country's performance of its obligations. The second, which would be novel, is similar to an approach I introduced above: Give more teeth to the IMF's surveillance function by linking Article IV consultations to voting power. Specifically, in those cases where the IMF finds in the course of Article IV consultations that a member country has departed substantially and chronically from its obligations under the specified treaties, guidelines, and standards—or, as suggested above, from other economic and financial policies agreed to earlier with the IMF—the member country's voting power would be suspended until the country corrects that shortcoming. Such an approach would amount to a modification of the weighted voting system, so that a member's usable voting power would be based on its quota, as under current rules, unless the member's failure to abide by its obligations triggered a suspension of that voting power.²⁷

The points sketched out above have indicated how the IMF might become more *insistent* in encouraging its member countries to live up to the minimum standards that are increasingly recognized as essential for competent governance in an inter-connected world. But there is also another approach that I believe should be considered to achieve this end—authorizing the IMF to become more *generous* in encouraging its member countries to live up to those minimum standards. Such generosity could come in the form of substantially increased technical assistance funded by the wealthy industrialized countries that control the IMF's operations.

Such an increase in technical assistance would permit the IMF to do much more than it does now in the way of training and assisting government officials in a range of areas where many countries fall short, such as planning of budgets, setting tax policy, collecting taxes, writing economic legislation, supervising banks and other financial institutions, establishing deposit insurance systems, managing foreign reserves, issuing and trading in government securities, managing monetary policy, implementing programs of social insurance or public welfare, keeping and auditing government accounts, and conducting government procurement operations.²⁸

²⁷ As I have summarized it here, the proposed authority to suspend voting power for failure to meet treaty obligations (or to hew to agreed-upon economic and financial policies), would be an all-or-nothing matter. A more nuanced, but more complicated, approach would be to authorize partial suspension (that is of some but not all) of a member's voting power.

²⁸ Providing technical assistance in these areas can serve an important protective function: if a country engages in economic liberalization, particularly financial liberalization (for example, becoming more integrated with global financial markets), that country exposes itself to the danger of shocks and even crises. Technical assistance in constructing an adequate legal infrastructure—effective banking supervision standards, for example—can spell the difference between disaster and prosperity. See generally M.

As indicated in subsection IIC2 of Chapter Three, the IMF already undertakes an extensive and varied program of technical assistance to its member countries. However, the IMF itself has acknowledged in a recent policy paper that “[a]s the IMF intensifies its efforts to help countries strengthen their economic policy and financial management capacities, the pressure of demand on its technical assistance resources is likely to increase further”, especially under a relatively new initiative to carry out wide-ranging Technical Cooperation Action Plans, the implementation and financing of which “will greatly exceed the technical assistance resources and instruments [currently] available to the IMF”.

The provision of such technical assistance funding by wealthy countries would be akin to the transfers of wealth that have already taken place within the context of the IMF through the Trust Fund and the soft loan operations of the ESAF and the PRGF, noted above. Such transfers have also been made (as also discussed earlier) in other contexts as well, as through the Global Environment Facility²⁹ and the soft loan operations of the IDA.

In short, I believe a one-two punch could be designed to encourage IMF member countries to take seriously the obligations that all countries must honor in today’s world in order to meet the minimal standards of competence: the IMF would both (1) become more *insistent* by enforcing such obligations through conditionality and new suspension-of-voting-power rules and (2) become more *generous* by providing technical assistance that would be funded by the wealthy countries. And underlying both approaches would be a shared understanding that the economic growth and well-being of every national economy depends on competent governance, and competent governance requires meeting a wide range of challenges—not only those of a purely economic and financial nature but also those involving distributional and social justice, environmental protection, fundamental human freedoms, transparency, integrity, and participatory decision-making.

III. REFORMING THE WTO

What is to be done with the WTO, and with the free-trade ideology that underlies it? In the following paragraphs I shall summarize suggestions that

Auhan Kose, Eswar Prasad, Kenneth Rogoff, and Shang-Jin Wei, *Financial Globalization: Beyond the Blame Game*, FINANCE & DEVELOPMENT, Mar. 2007, at 9, 13.

²⁹ As noted in Chapter Five, the Global Environment Facility provides a mechanism by which the costs of using environmentally friendly technology and techniques in development activities can be offset with resources contributed by the richer, more industrially advanced countries.

I believe warrant consideration in five areas of possible reform or re-direction. In doing so, I draw heavily from the criticisms that I generally endorse, as discussed above in Chapters Four and Five; and I also refer to some cogent aspects of the criticisms that I largely dismiss—for, as indicated earlier, some of the criticisms that I consider generally unfounded do nevertheless have some persuasive threads or angles to them.

A. Distributional Justice and Distributional Generosity

First, I believe effective action needs to be taken to allocate some of the free trade “winnings” to the free-trade “losers”. This is, of course, a view shared by many others, as illustrated by the examples in Box 6.4. My specific recommendation, however, is that a requirement should be imposed on all WTO member countries to provide assistance to workers displaced by imports. Under such a requirement, for example, the USA would need to see that the Trade Adjustment Assistance system is revised, reinvigorated, and adequately funded.

Such a requirement could appear in a new multilateral treaty that would also address the relationship between trade, environmental, and human rights issues (discussed further below). If necessary, substantial financial transfers, with adequate safeguards and clear conditions, should be made by rich countries to poor countries to help fund their systems of Trade Adjustment Assistance. Such transfers could be modeled after the funding provisions for the Ozone Trust Fund or the Global Environment Facility.³⁰

Why should there be any interest in allocating some free-trade “winnings” to the free-trade “losers” within a national economy? Without going into detail, I shall identify two types of reasons: ethical and practical. As an *ethical* matter, the weaving of a strong safety net to aid those who are displaced by trade liberalization squares with a belief that appears as a central feature in most religious and moral systems—to wit, that it is ethically right to provide assistance to those who find themselves in difficult circumstances, whether or not any legal claim to such assistance can be offered (hence, my use of the term “distributional generosity” in the heading for this subsection). As a *practical* matter, providing support to free trade “losers” reduces the political support for a new wave of protectionism that would constitute a drag on the economy generally and that could set in motion the same sort of “tit for tat” imposition of national competitive protectionist trade restraints the world saw in the 1930s. Expressed differently,

³⁰ The Ozone Trust Fund is described briefly in subsection IIIA of Chapter Four. The Global Environment Facility was discussed above.

Box 6.4—Views on Allocating Some “Winnings” of Free Trade to Its “Losers”

- In late 2004, Professor Jagdish Bhagwati reminded readers of the *Financial Times* that the question of how to provide such assistance has occupied legislators and policy makers for many years but still has not been tackled as it should be. See Jagdish Bhagwati, *Compensating Losers in Trade Liberalisation Process*, FINANCIAL TIMES, Oct. 19, 2004, at 16.
- In his recent book on the WTO, Kent Jones observed that “[g]overnments must develop politically effective means of softening the hardship that accompanies economic change, while promoting measures to facilitate adjustment to change”. Kent Jones, *WHO’S AFRAID OF THE WTO?* 199 (2004). His proposal would extend beyond trade-related job losses to any job displacement.
- Nobel laureate Amartya Sen has noted that although “global trade and commerce can bring with it . . . greater economic prosperity”, “there can be losers and well as gainers, even if in the net the aggregate figures move up rather than down”. In response, he says, society should make “concerted efforts to make the form of globalization less destructive of employment and traditional livelihood, and to achieve gradual transition” that will include “opportunities for retraining and acquiring new skills” as well as “providing social safety nets”. Amartya Sen, *DEVELOPMENT AS FREEDOM* 240 (1999).
- A recent letter to the editor co-authored by a World Bank vice president and a Nobel laureate in economics made a similar point: “Globalisation is a positive sum game in the aggregate but one that produces both winners and losers. . . . [P]rotectionist voices . . . must be controlled because the cost of disengaging [from globalization] in terms of foregone potential growth, especially among the poorer countries of the world, is simply too high”. They call for “programmes that help individuals [who are losers from globalisation] make employment transitions, and solid safety nets and assured access to basic services such as education and healthcare”. Danny Leipziger and Michael Spence, *Globalisation’s Losers Need Support*, FINANCIAL TIMES, May 15, 2007, at 11.
- Some observers call for more radical forms of support for those who lose from trade liberalization—for example, “a substantial redistribution of income . . . [by] adopting a fundamentally more progressive federal tax system” as a means of “saving globalization from a protectionist backlash”. Kenneth F. Scheve and Matthew F. Slaughter, *A New Deal for Globalization*, 86 FOREIGN AFFAIRS, July–Aug. 2007, at 34, 35.

oiling the squeaky wheel is much more inexpensive and effective than slowing down the entire vehicle to reduce the squeaking.

What about distributional justice and generosity at the global level? In examining this issue above (in Chapter Four), I noted the valuable work done by Professor Raj Bhala in examining the “anti-Third World claim” that the rules of GATT-WTO law—and in particular those pertaining to special and differential treatment for less developed countries—are in fact unjust in their formulation, their application, or both. Professor Bhala concludes that although those rules are not unjust, they could be, and should be, more generous.³¹

I fully agree, and I largely endorse the three specific suggestions Professor Bhala makes for achieving this improvement.

- First, every year, every rich WTO member country should pay for one year-long training program in international trade law for at least three lawyers from the Third World. As anyone involved in international student exchange or study-abroad programs will attest, such training can have enormous benefits for all involved. This specific sort of training would help build capacity around the world to deal effectively with trade regulation issues.
- Second, the conditions imposed by the rich countries on eligibility of less developed countries (and their products) for special and differential treatment—such as especially low (or zero) tariff treatment under the Generalized System of Preferences—would be largely eliminated, in part because most of those conditions typically reflect protectionist impulses anyway.
- Third, each rich WTO member country should participate in an effort to help the LDCs diversify their export base, at least by transferring no less than 10 US cents per citizen residing in that rich country to an Export Diversification Grant Fund designed to finance industries and service providers in such LDCs that seek to commence or expand exportation of their products and services.

³¹ Raj Bhala, *TRADE, DEVELOPMENT, AND SOCIAL JUSTICE* 519 (2003). Bhala grounds his recommendation in Catholic theology (with analogues in Islamic teaching). I would take a more secular approach and urge generosity toward LDCs on general ethical grounds as well as on practical grounds of national self-interest. Other passages in Bhala’s book from which the following paragraphs draw appear in Bhala, *supra*, at 473, 476–479, 481, 483–498.

These suggestions for imposing further obligations on rich countries to provide special and differential treatment for LDCs in the area of trade are modest in scope, perhaps even niggardly. Once these small steps are taken, however, I would hope that perceived successes of these initiatives would encourage rich countries—especially the USA, whose leadership in this area is so important—to expand dramatically the scope of their generosity.

Lastly under the topic of distributional justice and generosity, I turn to the third perspective I offered above (see section II of Chapter Four) regarding the claim that, at the global level, the current GATT-WTO international trade regime is unfair to LDCs because the developed countries are not following the rules. The anti-WTO literature unmistakably reveals this perception, and for good reason. The rebuke that the USA received in April 2004 from the WTO dispute panel deciding the cotton subsidies case should be regarded as an embarrassment to the US government and a stern reminder to it and other high-subsidy-providing governments (particularly the EU) that they are standing on the wrong side of the rules that they themselves have pressed the rest of the world to adopt. In my view, the rich countries should take just the opposite approach from what the USA has taken: instead of pressing for advantage in trade competition with LDCs by trying to get away with programs that edge as close as possible to the line between GATT legality and illegality, they should instead be practicing extreme caution—even fastidiousness—in staying far away from that line, in order to avoid even the appearance of impropriety in their own adherence to the rules they have championed. The price of hypocrisy on the part of the rich countries will be an erosion of the global commitment to trade liberalization; the price of sustained hypocrisy will be a sustained erosion and eventual crumbling of that commitment.

Accordingly, I believe the USA should put an end to its participation in what even a former president of the World Bank has called a “squandering” of \$1 billion a day by rich countries on farm subsidies that often have devastating effects on farmers in LDCs.³² Specifically, it should quickly

³² See Edmund L. Andrews, *Rich Nations Criticized for Barriers to Trade*, NEW YORK TIMES, Sept. 30, 2002, at A7 (quoting former World Bank President James Wolfensohn). In a similar vein, Stanley Fischer, a former Deputy Managing Director of the IMF, is reported to have called the protectionist policies of the USA, Europe, and Japan “scandalous”. *Id.* Likewise, a chief economist of the World Bank has reportedly called it “hypocrisy to encourage poor countries to open their markets while imposing protectionist measures that cater to powerful special interests”. *Id.* He is also reported to have said that each day, the average European cow receives \$2.50 in subsidies while 75 percent of the people in Africa are scrimping by on less than \$2. Barry Bearak, *Why People Still Starve*, NEW YORK TIMES MAGAZINE, July 13, 2003, at 36.

reduce and eliminate agricultural subsidies that have trade-distorting effects, and it should press the EU and other wealthy members of the international community to do the same.³³ In addition, the rich countries should take strong initiatives to dismantle other forms of protectionism that keep out imports from LDCs—barriers that the UN Commission on Trade and Development has calculated as costing LDCs US\$700 billion every year.³⁴

A fairly obvious retort to my recommendations regarding distributional generosity and distributional justice would be that supporting such recommendations would amount to a poison pill for any politician—or expressed differently, that the political climate in many countries, and especially the USA, would be so unreceptive to such recommendations that no political figure promoting them could hope to gain office or stay in office. To this retort I would simply ask that efforts be made to change that political climate. I find it deeply disappointing, even irresponsible, that political leaders in the USA in particular—given this country’s prominence and influence—do so little to promote a climate of conscientious international economic liberalism. One observer has expressed it well: “In conjunction with [the need to develop politically effective means of softening the hardship that accompanies economic change], governments should publicly promote the benefits of trade liberalization and seek to secure the broadest possible support among their industries and populations for it”.³⁵

³³ In offering this suggestion, I am fully aware of some of the reasons that could be used to support the granting of agricultural subsidies, particularly subsidies on US cotton production, and to support the staunch defense of such subsidies through the WTO dispute settlement system. These might include the following points: (1) agricultural subsidies can provide crucial financial support for some struggling farmers (although many persons benefiting from such subsidies are by no means struggling); (2) cotton subsidies in particular can serve important environmental aims by encouraging dry crops in a part of the USA where irrigation of (other) crops is quickly depleting aquifers; (3) a vigorous defense of such agricultural subsidies helps develop jurisprudence in an important area of law and shows respect for the WTO dispute settlement system; (4) a vigorous defense of such agricultural subsidies can also preserve bargaining chips that the rich countries can use in the tough trade negotiations that lie ahead in areas in which they have already made considerable concessions to less developed countries, such as in pharmaceutical intellectual property rights; (5) as a political matter, it is extremely difficult for the government of a rich country that is accustomed to providing agricultural subsidies to discontinue those subsidies without the “cover” of a ruling declaring them in violation of GATT obligations. On balance, however, I believe a better state of affairs would be one in which political will is developed within the rich countries, through strong internationally minded leadership, to lead by example in practicing what they preach in favor of trade liberalization. I am grateful to Raj Bhala for helping me consider these various ideas.

³⁴ See Oxfam International, *Is the WTO Serious About Reducing World Poverty?*, at 4 (Oxfam Briefing Paper, unnumbered, 2001).

³⁵ Kent Jones, *WHO’S AFRAID OF THE WTO?* 199 (2004).

B. Environmental and Human Rights Protections

A second set of suggestions for reform emerges from the analysis I offered in sections III and IV of Chapter Four. In my view, the linkage should be strengthened between trade rules and environmental and human rights protections, in such a way as to ensure that trade liberalization does not act at cross-purposes with the efforts to protect the environment, labor rights, and other human rights. A recent article by Professor Andrew Guzman of Berkeley is speaking, I believe, of roughly the same thing in proposing that the WTO be changed to “eliminate the trade bias”.³⁶ The general contours of the linkage between trade, environmental, and human rights rules should, in my view, be similar to those I described above with respect to the MDBs and the IMF: WTO membership requirements should be expanded so that a country’s membership in the WTO would require that country to accept certain specified obligations in basic (existing) multilateral treaties relating to environmental protection and human rights, especially labor standards.

To this end, new treaty obligations should be put in place—probably by means of (1) a new treaty that would be incorporated into the cluster of treaties whose implementation the WTO is responsible for facilitating, as well as (2) minor corresponding amendments as necessary to the WTO Charter itself—that would require WTO members to adhere to the substantive provisions of the very same list of twelve environmental and human rights treaties that I identified above (see Box 6.1) in recommending reforms in the MDBs. I have also suggested above that the same list of twelve treaties apply in the case of the IMF.³⁷

The mechanism by which WTO membership would link trade rules to treaty rules on environmental protection and human rights standards is not novel. As noted earlier, precedent appears in (1) the “single-package” approach of the Uruguay Round treaties, by which WTO membership requires acceptance of all the multilateral treaties emerging from the

³⁶ Andrew T. Guzman, *Global Governance and the WTO*, 45 HARVARD INTERNATIONAL LAW JOURNAL 303, 337–338 (2004). Professor Guzman proposes, as a means of eliminating the WTO’s trade bias, “housing a range of international economic issues within a single institution”, and he asserts that “a reformed WTO should be the starting point for the construction of that single institution”. *Id.* at 313. I am not convinced that the concentration of all such issues into a single institution is the best approach, but I do think that the GEOs in general should broaden their reach, as described herein.

³⁷ In the case of both the MDBs and the IMF, I also proposed linking membership in those institutions with acceptance of certain other international standards and guidelines regarding finance and governance issues. In view of the fact that the WTO’s mandate is somewhat narrower than those of the MDBs and the IMF, it strikes me as unnecessary to bring norms of those types under the WTO’s purview.

Uruguay Round), and (2) the TRIPs Agreement, into which the key provisions of certain intellectual property treaties are incorporated by reference.

Indeed, the TRIPs Agreement served as the point of departure for an excellent analysis of the relationship between environmental protection, labor rights, and trade liberalization in an article published a few years ago by Professor Chantal Thomas.³⁸ Noting the TRIPs precedent for incorporating certain “trade-related” issues into WTO law, Professor Thomas explores two possible forms of linkage between the “trade-related” issues of environmental protection and labor standards:

- adding two new treaties—one setting forth core principles of environmental protection treaties and the other setting forth core principles of labor treaties and standards—to the set of agreements administered by the WTO, as was done in the Uruguay Round with intellectual property rights; or alternatively
- amending the language of Article XX of the GATT “to incorporate identified principles of international labor and environmental law” as set forth in multilateral treaties that would then be listed in an annex to the GATT.

My proposal would combine elements of these two approaches, in that it would involve the establishment of new treaties that would themselves incorporate, by reference, principal obligations found in major environmental and labor treaties.

The linkage I would propose between trade and environment would also have some more specific features to it. Here are three:

- For one thing, I would propose a clarification—or, if necessary, a modification of the GATT rules—providing that import restrictions imposed by a WTO member for legitimate environmental protection purposes would *not* be regarded as violative of free-trade commitments so long as such restrictions are not discriminatory by design or effect (using the concept of discrimination discussed above in section IV of Chapter Four).
- In addition, clarifications or amendments to GATT rules should be put in place to provide that trade in goods that were manufactured under circumstances falling short of multilaterally accepted environmental standards would attract special trade barriers. Such barriers could include, for example, “envi-

³⁸ See generally Chantal Thomas, *Trade-Related Labor and Environment Agreements?*, 5 JOURNAL OF INTERNATIONAL ECONOMIC LAW 791 (2002).

ronmental countervailing duties” set at levels to offset the amount of indirect subsidies enjoyed by manufacturers in producing goods in a “pollution haven”.

- Third, a renewal and expansion of the “green light environmental retrofit” subsidies permitted under the Subsidies and Countervailing Measures Agreement (see the discussion in subsection IVA of Chapter Three) should be undertaken so as to permit a country to subsidize the “greening” of its industrial base without fear of other countries reacting by imposing countervailing duties.

For both areas of environmental protection and human rights protection, efforts should be renewed to expand the coverage and the enforcement mechanisms for pertinent existing treaties. Within the USA, for example, political pressure should be applied to trigger participation in some of the environmental and human rights treaties in which the current US administration has shown so little interest. Beyond this, however, lies the question of how, if at all, the WTO dispute settlement procedures would apply to the provisions of environmental and human rights treaties. As Professor Andrew Guzman asks this question, “which obligations get [WTO] dispute resolution?”³⁹ My own tentative answer is, I believe, roughly the same as Professor Guzman’s: trade obligations obviously “get” WTO dispute resolution, and obligations undertaken via non-trade treaties that are linked to trade treaties (in the fashion I have discussed above) should be made subject to WTO dispute resolution procedures if doing so would clarify the relationship between trade and non-trade treaty obligations, or in certain other cases with consent of the parties.⁴⁰

³⁹ See Guzman, *supra* note 36, at 324. For Professor Guzman, the question arises in the context of his proposal to create a WTO with broader coverage. Accordingly, he poses the question in this way: “Expanding the WTO would also raise difficult questions about the proper treatment of the many existing non-WTO international obligations, the most obvious of which are the significant environmental, human rights, and labor agreements. For example, if environmental issues are brought within the WTO, should existing environmental obligations also come within the WTO’s jurisdiction and, if so, should they be subject to the dispute settlement system?” *Id.* He answers the first question in the affirmative; as for the second question, he suggests that WTO dispute settlement provisions should be the “default rule” in the sense that states “should be permitted to make some agreements that have different dispute resolution provisions, or none at all”. *Id.*

⁴⁰ As Professor Guzman points out, it is not the case that international agreements without procedures for dispute settlement are meaningless. “In fact, the vast majority of international agreements do not have mandatory dispute resolution provisions. Making an effective dispute resolution mechanism available but not mandatory gives states a wider range of options”. *Id.* at 325.

C. Transparency

A third suggestion emerges from the “secrecy and opaqueness” criticism leveled at the WTO (discussed above in Chapter Five): The WTO should expand its efforts at ensuring that its operations are transparent and publicly understandable. While much has been done in this area⁴¹—as is true also of the IMF and the MDBs—the WTO has such a negative image associated with it that it needs to undertake especially effective and well-publicized initiatives resulting in public access to and understanding of what the WTO has done, is doing, and proposes to do.

Such efforts should, in my view, encompass several of the various aspects of transparency that I identified above in the context of the MDBs. For example, to the extent that it has not already done so, the WTO should ensure that the public have electronic access (presumably through the WTO Web site) to these documents:

- the records of discussions and decisions at the meetings of WTO governing bodies;
- substantive recommendations made by member governments, WTO staff, and others offering comments to the governing bodies for their decision;
- the WTO’s governing policy, procedural, and operational documents; and
- all legal opinions issued by the chief officer in the WTO Legal Affairs Division to a governing body of the WTO.

In all these cases, disclosure of and access to information would be subject to appropriate respect for confidentiality where necessary to protect legitimate interests of private parties. Moreover, because of the need for candid and lively debate in the early development of negotiations and policies, internal staff memoranda would typically not be publicly available.

D. Accountability

Fourth, WTO accountability should be increased dramatically, in at least two principal ways—in addition, that is, to the improvement in accountability that will naturally flow from increased transparency. The first has to do with judicial review, and the second with NGO and other public participation in WTO affairs.

⁴¹ Even a glance at the WTO Web site, <http://www.wto.org>, reveals the seriousness with which the WTO is undertaking a public-awareness campaign. For example, one segment of the Web site is devoted expressly to NGOs; it lists, for instance the 600-plus representatives of NGOs attended the 2005 Hong Kong WTO meetings.

As for judicial review, I propose the establishment of an entity that will serve about the same function as the World Bank Inspection Panel—that is, to accept complaints from individuals or groups alleging that the WTO had acted inconsistently with its own charter or its own announced policies and principles. The jurisdiction of this entity would not include judicial review of WTO dispute panel or Appellate Body decisions regarding the substantive interpretation of the GATT 1994 or other Uruguay Round treaties—the Dispute Settlement Understanding (DSU) already provides adequate coverage of those matters, and by persons with expertise that would be hard to match.⁴² The reviewing entity’s jurisdiction would, however, authorize it to determine whether the WTO’s actions of a procedural and institutional character passed muster when judged against the provisions of the DSU, against the decision-making provisions of Article IX of the WTO Charter, and against standards set for WTO governing bodies regarding transparency, participation, equal treatment of members, the international character of the WTO staff, and the like.

As for NGO participation, in my view, the scope of NGO participation in WTO operations—both policy making and adjudication—should be expanded, but very carefully. In this regard I largely concur in the suggestions made by several commentators favoring such NGO participation by providing expert opinions and external perspectives. For example, as recommended by Steve Charnovitz, the WTO should “mainstream NGOs into the regular work sessions of WTO councils, committees, and bodies”,⁴³ perhaps by means of what Ernst-Ulrich Petersmann has referred to as “an advisory body [composed of NGO representatives and having] access to WTO documents and the right to submit recommendations to all WTO bodies subject to procedures which ensure more accountability of NGOs and check their democratic legitimacy”.⁴⁴

⁴² In expressing this view, I realize that it conflicts with the suggestion of some observers that a veto power be created to override panel or Appellate Body decisions. See, e.g., Guzman, *supra* note 36, at 348 (summarizing a proposal by Claude Barfield that a specified minority of WTO members—perhaps one-third of members accounting for at least one-quarter of trade among members—should be able to block a panel decision). While such suggestions certainly warrant serious consideration, my tentative view is that such an “override” possibility would invite too much politicization of the process.

⁴³ Steve Charnovitz, *WTO Cosmopolitics*, 34 N.Y.U. JOURNAL OF INTERNATIONAL LAW & POLICY 299, 343 (2002).

⁴⁴ Ernst-Ulrich Petersmann, *Human Rights and International Economic Law in the 21st Century: The Need to Clarify Their Interrelationships*, 4 JOURNAL OF INTERNATIONAL ECONOMIC LAW 3, 37 (2001), as quoted and cited in Charnovitz, *supra* note 43, at 343. See also Jones, *supra* note 35, at 199 (suggesting that “[t]he WTO Secretariat should establish a select advisory board of NGOs for regular contact and exchanges of views with the director general” and that increased NGO participation in WTO activities should be determined through negotiations).

Another means by which the interests of NGOs and their constituencies might be served in the context of the WTO is through expanded operations of, and support for, the Advisory Centre on WTO Law (ACWL). The ACWL, established under an agreement signed in 2001, aims to provide less developed countries with training and legal assistance in WTO matters, especially in the context of dispute settlement proceedings. There are thirty-seven members in the ACWL (including ten developed countries). In my view, broad support should be provided either to the ACWL or to some other mechanism for assisting entities representing the interests of less developed countries—not only their government officials but also NGOs and other groups—in navigating WTO waters.⁴⁵

An additional form of public participation in, or oversight over, WTO operations that is worth considering has been discussed by Professor Gregory Shaffer of the University of Wisconsin Law School. He has examined the possible introduction of an inter-parliamentary WTO body that would ensure parliamentary control over WTO rule making. Although numerous practical issues would need to be addressed in order for such a plan to work well, it does hold the promise of enhancing WTO accountability.⁴⁶ Another idea warranting consideration would offer more of a “top-down” approach—the creation of a global process to review the appropriate distribution of tasks between the WTO and the UN agencies.⁴⁷

E. Development Assistance

Fifth and finally, the wealthy countries should commit immediately to a substantial increase in resources to be made available to assist in the eco-

⁴⁵ Improving the ability of less developed countries to navigate WTO waters might help avoid the unfair rich-country bias that some commentators have observed in some trade negotiations. See Hassan Bougrine, *The World Trade Organization, Free Trade Areas, and the Distribution of Wealth*, appearing as chapter 8 in *GLOBAL POLITICAL ECONOMY AND THE WEALTH OF NATIONS*, at 184 (Phillip Anthony O’Hara ed., 2004).

⁴⁶ See generally Gregory Shaffer, *Parliamentary Oversight of WTO Rule-Making: The Political, Normative, and Practical Contexts*, 7 *JOURNAL OF INTERNATIONAL ECONOMIC LAW* 629 (2004). As Professor Shaffer explains, the “primary criticisms of an inter-parliamentary WTO body are (i) that it would provide a facade of WTO legitimacy and privilege an [allegedly] illegitimate WTO process; (ii) that national parliaments . . . should focus their attention on enhancing their oversight of national positions within their own constitutional orders; (iii) that well-organized groups, such as western multinational corporations . . . , would be best-placed to lobby and advance their interests through an inter-parliamentarian body; and (iv) that adding a parliamentary dimension would add further complexity to the already difficult process of multilateral trade negotiations”. *Id.* at 648.

⁴⁷ See Gary P. Sampson, *Is There A Need for Restructuring the Collaboration Among the WTO and UN Agencies So As To Harness Their Complementarities?*, 7 *JOURNAL OF INTERNATIONAL ECONOMIC LAW* 717, 726–727 (2004). This approach is reportedly consistent with suggestions made by two former Directors-General of the WTO, Peter Sutherland and Dr. Supachai Panitchpakdi. *Id.*

conomic development of poor countries. Why is this point included in recommendations regarding the WTO and trade? Because of the causal link I see between economic development, good national governance, and trade. As I explained above in evaluating the “democracy deficit” criticism as leveled at the WTO, I believe economic distress of the magnitude existing in many countries of the world makes good governance very difficult and bad governance prevalent; bad governance makes for bad policy or, at best, bad implementation of good policy—including economic, financial, and trade policy. In turn, bad policy performance in these areas perpetuates the economic distress. In my view, a dramatic increase in the commitment of wealthy countries, including especially the USA, to improve the economic circumstances of the LDCs is essential to break this cycle of despair.

IV. CONCLUDING OBSERVATIONS

A. Collective Assessment of the GEOs

I would offer some overarching conclusions that I draw from my study of the criticisms leveled at the GEOs. First, the GEOs have struck a good balance between (1) the need (as a legal and practical matter) to keep their operations within the bounds of legal propriety consistent with the charters that created them and (2) the need to respond to pressure (much of it legitimately applied) to make forward progress in responding to changing circumstances in the world.

Let me try to “unpack” that condensed conclusion. Surely nobody—or at least nobody worth listening to regarding international economic relations—would challenge the assertion that the GEOs must remain faithful to their charters. They must resist the temptation or pressure to act *ultra vires* by taking on functions not assigned them or powers not granted them. Likewise, they have an institutional obligation to exercise those functions and powers that their charters do give them. In my view, the GEOs have done a relatively good job in remaining faithful to their charters. This view is reflected in my rejection, for the most part, of the criticisms alleging that, as a legal matter, the GEOs are guilty of “mission creep”. This view of charter fidelity is also reflected in my observations that most of the GEOs have been slow to incorporate environmental, human rights, labor, and other social concerns into their operations. That is, they have been slow to reflect these matters in their operations because, for the most part, their charters do not grant the GEOs explicit authority to do so.⁴⁸ (I believe such authority should be clarified and broadened, as discussed above.)

⁴⁸ My view that the GEOs have resisted *ultra vires* action is informed partly by my own experience. About seven years ago I completed a comprehensive annotation to the AsDB Charter, for use within that institution. My review of hundreds of documents, mainly legal memoranda written by lawyers in the Office of General Counsel over three

On the other hand, although the GEOs have typically been careful to remain faithful to their charters—as they should—they have also responded to growing pressures placed on them to move forward with the times. Most of this pressure has, to my mind, come from legitimate sources, including the member countries themselves and various interest groups whose aim is to promote the interests of the intended beneficiaries of the GEOs' operations. Again I use environmental protection as an illustration. Although the charters of all the MDBs except the European Bank for Reconstruction and Development (EBRD) are silent on environmental protection, those institutions have been pressed by various groups to enlarge and update their understanding of “economic development” to provide at least some mechanisms for guarding against the most egregious environmental damage from the building of roads and ports and other infrastructure, and indeed for encouraging environmental repair and improvement in recent years. Another illustration can be seen in the increasing transparency of the GEOs. While I generally endorse (for reasons explained above) the “secrecy and opaqueness” criticisms as directed against the MDBs and the WTO, I also recognize and applaud the very substantial progress made in all the GEOs in terms of transparency in recent years. The fact that some of them should go further in this regard must not blind us to the distance they have already traveled.

In sum, I believe the GEOs have, in general, struck the balance well between (1) charter fidelity and (2) pressure to progress. It is important that the MDBs, and their observers and critics, place high value on both of these elements. Otherwise we would have GEOs that are either runaways or sticks-in-the-mud.

A second overarching conclusion that I draw from my study of the criticisms leveled at the GEOs is this: we are now in a dramatically new era of international economic relations (both public and private in nature), and all of the GEOs need to be modified to reflect the new reality. Reform is essential. As I expressed it earlier in this chapter, the GEOs must “change or die”. I have suggested in the preceding pages some specific changes that I believe are needed.

But are such changes *possible*? That depends. If enough people believe, as I do, that the GEOs are central players in what I described earlier as the Fourth World War—the Global Development War—then it will be possible to muster the political will to change the GEOs in ways that will help win that war.

decades, revealed the care taken within the AsDB to hew closely to the letter and the spirit of its charter, notwithstanding frequent pressures to stretch or exceed the limits that the charter imposes on the institution.

The pressure against reform of the GEOs is very strong, in part because of what might be called the “Pandora’s Box issue”. Substantial reforms of the type I have enumerated above would require amendments to the GEOs’ charters; and any attempt to open up those charters for the purpose of making amendments, however narrowly focused, might unleash a storm of proposals, demands, and rhetoric that would send the organizations into chaos. I believe it is partly for this reason that proposals over the years to revise the UN Charter have languished without much official attention despite the fact that some of the Charter’s provisions (on the use of force, for example, or the composition of the Security Council) seem clearly anachronistic.

At some point, however, the present becomes closer to the future than to the past, and that future must be addressed by an updating of past solutions. What I mean by that high-sounding language is that the need in today’s world for international institutions that can effectively facilitate economic relations among states is so great, and so imminent in nature, that the GEOs we have today (even the two of them that were created in the 1990s) simply cannot meet that need. Too many changes have taken place in our views on environmental protection, on social aspects of economic development, on participatory structures in public institutions, and on the so-called North-South divide for the existing institutions, working within their existing charters, to be effective in a new age.

B. The Perils of Bilateralism

I suggested in the opening pages of this book (see the “Foreword and Synopsis”) that one way in which we are losing the Global Development War is by permitting ideological and institutional alternatives to gain influence and to displace the kind of multilateralism that emerged out of World War II. I wish to expand on that observation briefly by examining two recent manifestations of bilateralism. The first appears in the area of international economic development financing. The other appears in the area of international trade regulation.

1. Chinese Bilateral Development Financing

The March 2007 issue of the *Economist* news magazine featured a special report on the PRC. It offered this account of recent initiatives taken by that country’s government toward the government of Cambodia:

Last March [2006] Cambodia’s aid-givers—including the World Bank, the Asian Development Bank (ADB) and bilateral donors, though not China—agreed at their annual gathering with the government to provide the country with just over \$600m in aid—the

equivalent of three-fifths of the national budget. But at the same time they dressed the government down for the country's poor human-rights record and for letting one more year go by without passing an anti-corruption law. The aid would come with lots of conditions.

Imagine the donors' shock last April [2006] when China's prime minister, Wen Jiabao, paid Cambodia a visit and announced that China would pony up \$600m for roads, dams, whatever—equivalent to almost the entire international aid budget. And, it seemed, with no strings attached.

Mr. Hun Sen has been rubbing donors' noses in it. At a recent ceremony to mark the opening of a Chinese-built road in the country's north-east, he praised China for honouring Cambodia's "independence and integrity". All Cambodians ask, he said, "is for an equal relationship with its partners . . . China is a very big country . . . If 1.3 billion Chinese urinated all at once, they would cause a great flood. But China's leaders do good things with their partners . . . When China gives, it doesn't say do this or do that. We can do whatever we want with the money".⁴⁹

How very nice. The PRC's apparent generosity has extended beyond Asia to Africa as well. A February 2007 opinion article in the *New York Times* gave this report:

My friend was visibly shaken. He had just learned that he had lost one of his clients to Chinese competitors. "It's amazing", he told me. "The Chinese have completely priced us out of the market. We can't compete with what they're able to offer".

There's nothing surprising about that, of course; manufacturing jobs are lost to China every day. But my friends is not in manufacturing. He works in foreign aid.

His story is about Nigeria's trains. The Nigerian government operates three railways, which are notoriously corrupt and inefficient. They are also falling apart. The World Bank—where my friend works—proposed a project based on the commonsense observation that there was no point in lending the Nigerians money without also tackling the corruption that had crippled the railways.

⁴⁹ *Can We Help You? How China is Wooing a Poor Neighbour*, *ECONOMIST*, Mar. 31, 2007, at 14.

After months of negotiation, the bank and Nigeria's government agreed on a \$5 million project that would allow private companies to come in and help clean up the railways.

But just as the deal was about to be signed, the Chinese government offered Nigeria \$9 billion to rebuild the entire rail network—no bids, no conditions and no need to reform. That was when my friend packed his suitcase and went to the airport.⁵⁰

Such reports of Chinese largesse abound, and there will be more of them soon. According to some accounts, the PRC intends to provide about US\$20 billion in infrastructure and trade financing to Africa in the coming three years, an amount that will reportedly eclipse financing from other donors. As in the case of the Nigeria and Cambodia deals referred to above, the Chinese funds typically do not carry conditions of the sort that the MDBs impose. Yet according to some observers, the Chinese funds might prove costly in the long term because they are loans—with repayment requirements, that is, to be met in the future—and provide no particular incentive to make policy changes to help assure the ability to meet those repayment obligations.⁵¹

Beyond the financial risks the PRC loans pose, of course, are the environmental and social concerns that such bilateral unconditional development loans raise. A few months ago the head of the European Investment Bank reportedly “caused a stir by suggesting the EIB and the World Bank lower their standards [on environmental protection and human rights issues] to avoid being undercut by Chinese banks”, which have vast resources at their disposal and who do not impose such environmental or social safeguards.⁵²

Among the social safeguards that matter most in Africa, of course, are those relating to incompetence and corruption in government. A *New York Times* editorial from February 2007 emphasizes this point:

⁵⁰ Moisés Naím, *Help Not Wanted*, NEW YORK TIMES, Feb. 15, 2007, at A10.

⁵¹ See William Wallis, *China's Pledge of \$20bn for Africa Will Eclipse Other Donors*, FINANCIAL TIMES, May 18, 2007, at 1. Other observers emphasize another potential danger to such loans: some of them represent “tied aid” of the sort referred to earlier, under which the funds can be used only for purchase of Chinese goods and services. See Jamil Anderlini, *Beijing's \$5bn Africa Aid Package Will Be Tied to Chinese Projects*, FINANCIAL TIMES, June 26, 2007, at 1. Some experts say such “tied aid” is wasteful and inefficient—for the recipient, of course.

⁵² Alan Beattie and Andrew Yeh, *China Treads on Western Toes in Africa*, FINANCIAL TIMES, Jan. 12, 2007, at 9.

Misspent your country's wealth? Waged war against an ethnic minority? Or just tired of those pesky good governance requirements attached to foreign aid by most Western governments and multilateral institutions?

If you run an African country and have some natural resources to put in long-term hock, you've got a friend in Beijing ready to write big checks with no embarrassing questions. That's nice for governments, but not so nice for their misgoverned people.⁵³

According to some reports, the PRC is not the only country engaging in "rogue" bilateral development financing: India also does it, and such other emerging economies as Brazil, South Africa, and Mexico are expected to follow suit.⁵⁴

I regard this as a dangerous development because it threatens to undermine the gains that have been made in recent years in making the MDBs more conscious of, and attentive to, issues that I believe bear directly on the future of our world. These include environmental protection, good governance, and fundamental human rights, and particularly the treatment of the most vulnerable members of society. These are the subjects covered by the twelve treaties listed above in Box 6.1. I have urged that key provisions of those treaties be linked to MDB membership, thereby harnessing the power of multilateralism. But if the trend toward bilateral, unconditioned development financing continues, that power will dissipate.

2. *US Bilateral Trade Negotiations*

The power of multilateralism also appears, of course, in the sixty-year history of the GATT and the record of trade liberalization that most economists consider beneficial to societies, at least in aggregate terms. But bilateralism has also been at work in this domain, especially in the last few years. Here, however, the prominent player is not the PRC but the USA. The Bush-Cheney administration has negotiated a flurry of bilateral trade agreements, evidently relying on the dominant bargaining position the USA enjoys in order to extract favorable provisions.

What is wrong with that? Try these for starters: diversion, discrimination, distortion, and a drag on development. All of these ills are said to result from the push for bilateral trade negotiations, as opposed to multi-

⁵³ *Patron of African Misgovernment*, NEW YORK TIMES, Feb. 19, 2007, at A18.

⁵⁴ See Hugh Williamson, *G8 Calls for Increased Scrutiny of Aid*, FINANCIAL TIMES, Mar. 28, 2007, at 2.

lateral trade negotiations. Consider the following observations on the first two of those ills, namely *diversion* and *discrimination*:

This month [April 2007] marks the 60th anniversary of the General Agreement on Tariffs and Trade, of which Cordell Hull was a founding father. It also sees the announcement of a “free trade agreement” between his country and South Korea. The core of the GATT was non-discrimination. The core of the new agreement is its opposite. Thus has the US taken the betrayal of its erst-while principles even closer to its logical conclusion.

. . . As Jagdish Bhagwati of Columbia University has argued, “free trade agreements” should, instead, be called “preferential trade agreements”. I would prefer “discriminatory trade agreements”. . . In this case, the US and South Korea agree to discriminate in favour of exporters or investors based in each other’s territory. The obvious potential economic cost of such an agreement is what Jacob Viner, the great inter-war trade economist, called “trade diversion”. . . . A more significant economic cost, however, is systemic. The number of preferential trade agreements has exploded upwards in recent years. . . . An agreement between the US [the world’s largest importer of merchandise products] and South Korea [the world’s sixth largest as of 2005] . . . makes probable yet another jump in the prevalence of such agreements.

That will have at least two further economic consequences. First, an increasing proportion of the world’s trade is sure to be governed by the diverse rules of . . . a host of discriminatory bilateral and plurilateral agreements. . . . Second, every further bilateral agreement will alter the degree of preference enjoyed by existing suppliers. That guarantees an explosion of business uncertainty. These are . . . inevitable results of what Prof. Bhagwati has called the “spaghetti bowl” of preferences.⁵⁵

An editorial appearing just after conclusion of the US-Korea bilateral trade agreement focused on the *distortion* that results from bilateral deals of this sort, pointing out that they “invit[e] imports not from the most efficient producers but from the countries facing the lowest trade barriers”. The editorial asserts that trade agreements should be “hammered out in a multilateral setting”, charging that “bilateral trade deals are absurd because there are simply too many bilateral relationships to address”. If all such

⁵⁵ Martin Wolf, *A Korean-American Strand Enters Trade’s Spaghetti Bowl*, FINANCIAL TIMES, Apr. 4, 2007, at 11.

relationships were subjected to bilateral agreements, the editorial explains, there would be 11,000 of them. The conclusion? The US-Korea bilateral trade agreement “is a shot in the kneecaps for the multilateral trading system, which remains the only way to agree and enforce workable trade deals”.⁵⁶

Perhaps most pertinent to the subject of this book is the *drag on development* that a bilateral approach to trade agreements threatens to create. The trade minister for Australia (a country that is also negotiating a forest of bilateral trade deals) expressed this concern:

Smaller and poorer countries risk being left behind in the stam-pede of bilateral trade deals in east Asia, the Australian trade minister has warned. . . . [He said that there] is a real issue for developing countries in being able to negotiate good quality [bilateral trade agreements]. Most of these countries do not have the negotiating capacity to deal with the large economies and get themselves a fair and reasonable deal”. [As a consequence] . . . they avoid [bilateral trade agreement] discussions altogether and that holds back their development.⁵⁷

In sum, I believe it is bad policy to follow a bilateral approach in trade negotiations. As another authority has stated, “the United States must resist the temptation to continue down its path of ad hoc globalization. Bilateral treaties have been an effective and convenient way to advance short-term priorities, but they have undermined vital multilateral processes and institutions”.⁵⁸

C. The Role of the USA and the Future of the GEOs

I wish to close by keeping the focus on the USA a bit longer but in a broader context than just that of bilateral trade agreements. I have taken a few opportunities in this book to offer some pointed criticisms of the USA. In Chapter Five, for example, I explained that some recent US actions form a pattern of policy and ideology that I deplore—that is, a gradual abandonment of the commitment made six decades ago to seek multilateral solutions for global problems in a wide array of areas, including economics, human rights, and the use of military force. That commitment to mul-

⁵⁶ *One Trade Deal Done, Thousands to Go*, FINANCIAL TIMES, Apr. 3, 2007, at 14.

⁵⁷ Alan Beattie, *Rush to Trade Pacts May “Hold Back Development”*, FINANCIAL TIMES, May 3, 2007, at 4.

⁵⁸ Rawi Abdelal and Adam Segal, *Has Globalization Passed Its Peak?*, 86 FOREIGN AFFAIRS, Jan.–Feb. 2007, at 103, 113.

tilateral solutions represented a collegiality of spirit and a faith in the mutuality of effort.

US behavior toward the GEOs and the rules that they administer constitutes just one example of many in which American foreign policy has taken a turn away from that form of multilateralism and toward unilateralism—a “go-it-alone” policy.⁵⁹ Other examples, in my view, include the Bush-Cheney administration’s snubbing of the international community with regard to the global warming treaty, its obstructionist attitude and action vis-à-vis the International Criminal Court, and the disregard or even disdain that it has shown for numerous other treaty regimes dealing with environmental protection and human rights and international security. It is, I believe, a dangerous trend—this abandonment of multilateralism and regression into unilateralism—and also a shameful trend if, as I suspect, it arises out of an arrogance of wealth and an ignorance of history. I hope it is a trend that can be reversed, the sooner the better, and not only reversed but emphatically rejected and disavowed, buried with a stake driven through its heart.

Looking forward, I believe the USA should embark instead on a new era of multilateralism that would bear fruit not only in the area of international economic affairs but also in many other areas, including human rights and environmental protection.⁶⁰ Moreover, consistent with that commitment, I believe the USA should be in the forefront—not near the rear, as it is now (see the discussion above in subsection IIC4 of Chapter Five)—of national generosity directed toward improving the economic circumstances of the world’s most disadvantaged people and nations.

A key element of the new era of multilateralism that I am calling for—the element that is most pertinent to this book—relates to the GEOs and the Global Development War in which they figure so prominently. I have tried to explain why, in order to keep from losing that Global Development War, there is an urgent need to forge a new consensus for multilateralism, and particularly to encourage the adoption of an ideology of liberal, intel-

⁵⁹ The recent American turn away from multilateralism actually takes two related forms—not only the “go-it-alone” form that I mention here but also a “my-way-or-the-highway” form, in which other members of the international community are invited to join the USA in an effort that has the appearance of being multilateral (and therefore not actually “go-it-alone”) in its implementation but is in fact unilateral (US-dictated) in its destination.

⁶⁰ For another expression of my views in this regard, see generally John W. Head, *Essay: What Has Not Changed Since September 11—The Benefits of Multilateralism*, 12 KANSAS JOURNAL OF LAW & PUBLIC POLICY 1 (2002).

ligent, participatory, multilateral, and sustainable human development. This will require a change of attitude and leadership, which in turn can help design a new generation of GEOs to serve the needs of our shared future. If and when that occurs, we will have stopped losing the Global Development War.

Draft Protocol to the AsDB Charter

*This proposed protocol (amending treaty)
to the AsDB Charter is referred to in
section IG of this chapter.*

(Draft) Protocol to the Agreement Establishing the Asian Development Bank

The Parties to this Protocol,

Considering that in order to further achieve the purposes of the Agreement Establishing the Asian Development Bank (hereinafter the Agreement”) and to enhance the contribution that the Asian Development Bank (hereinafter “the Bank”) can make in facilitating economic development, broadly defined, in the region (as defined in the Agreement), and

Taking into account the initiatives being taken by other multilateral development banks to make similar modifications to their charters and to cooperate in the establishment of certain common policies and institutional arrangements,

Have agreed as follows:

Article 1. Institutional Principles

The Bank shall be governed by the rules of public international law and by the following institutional principles:

1. Transparency, meaning in this context that the greatest practicable degree of disclosure of documents and other information produced by, within, or for the Bank shall be made to the public, and that the proceedings of the Board of Directors and of the Board of Governors shall to the greatest practicable degree be accessible to the public, subject to (i) the need to encourage vigorous and candid exchange of views among the Bank’s staff and (ii) the need to afford appropriate respect to confidentiality where necessary to protect legitimate interests of private parties.
2. Participation, meaning in this context that the Bank shall invite public participation in its development and implementation of policies pertinent to the Bank’s operations, and to this end shall, *inter alia*, (i) accept public comment on proposed actions in this regard and (ii) facilitate the participation by, and take into account the views of, nongovernment organizations.

3. Legality and the rule of law, meaning in this context that the Bank (i) shall state its policies clearly and act consistently with them and (ii) shall take into account in its operations and governance the performance of all members of the Bank in honoring their international legal commitments, including the treaty commitments referred to in Articles 5 and 6 of this Protocol.

4. Competence, meaning in this context that the Bank shall (i) place paramount emphasis, in the engagement and advancement of Bank staff, on ensuring their competence as international civil servants in the discharge of their duties and (ii) support efforts by national authorities to ensure that persons appointed as Directors and Governors have suitable professional qualifications necessary to meet their responsibilities.

5. Accountability, meaning in this context that the Bank shall (i) regard itself as accountable to its members and their people, as reflected in part by the establishment of the Tribunal referred to in Article 3 of this Protocol, and (ii) support efforts by national authorities to honor their obligations under the Articles of Agreement of the International Monetary Fund and to adopt and implement the general economic and financial policies prescribed by the Bank in its developing member countries to promote national economic growth and stability.

Article 2. Governance

1. The Bank shall promote through appropriate means, as determined by regulations adopted by the Board of Governors at the recommendation of the Board of Directors, the development in its regional member countries of effective multi-party representative governance.

2. Pursuant to paragraph 1 above, Article 36(2) of the Agreement is hereby amended to read as follows:

Except in furtherance of the provisions of Article 2, paragraph 1 of the Protocol to the Agreement Establishing the Asian Development Bank, the Bank, its President, Vice-President(s), officers and staff 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 concerned. Only those considerations made applicable by this Agreement and by that Protocol shall be taken into account in their decisions. Such considerations shall be weighed impartially in order to achieve and carry out the purpose and functions of the Bank.

3. The Bank shall take all action necessary and appropriate (i) to ensure that its own operations comport with sound practices of good governance and do not involve corruption or bribery and (ii) to promote within its member countries the adoption of practices and policies to combat corruption or bribery.

4. Each member of the Bank shall comply with the provisions of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (1997).

Article 3. Judicial Review of Bank Policies and Operations

1. The Bank shall participate in the work of, and abide by the decisions of, the International Tribunal for Multilateral Development Banks (hereinafter “the Tribunal”), pursuant to the Statute dated _____ by which that Tribunal is established and governed (hereinafter “the Statute”), and pursuant to any amendments to the Statute to which the Bank may become a party.
2. The Board of Directors shall, subject to any guidelines or regulations that the Board of Governors may wish to establish, appoint judges to the Tribunal, as provided for in the Statute and any amendments thereto to which the Bank may become a party.
3. Article 60(2) of the Agreement is hereby amended to read as follows:

In any case where the Board of Directors has given a decision under paragraph 1 of this Article, any member may require that the question be referred to the Board of Governors, whose decision shall be final unless it is appealed to the International Tribunal for Multilateral Development Banks pursuant to rules governing that Tribunal and applicable to the Bank. Pending the decision of the Board of Governors, the Bank may, so far as it deems necessary, act on the basis of the decision of Board of Directors; and pending the decision of the Tribunal, the Bank may, so far as it deems necessary, act on the basis of the decision of the Board of Governors.

Article 4. Economic and Financial Performance of Members

1. Each member of the Bank shall report annually to the Bank on its own policies and performance on economic and financial matters. The Board of Directors shall, subject to any guidelines or regulations that the Board of Governors may wish to establish, prescribe the criteria, indices, forms, and procedures that members shall apply for this purpose, as well as the standards of economic and financial performance that all members should meet.
2. If the Board of Directors determines, by a vote of the Directors representing not less than a majority of the voting power of the members, that a member of the Bank has departed substantially and chronically from the prescribed standards of economic and financial performance referred to in paragraph 1 above, that member’s voting power shall be partially suspended, in an amount that the Board of Directors determines to be appropriate to reflect the severity of the member’s departure from the prescribed standards; provided, however, that the operation of these provisions shall in no event result in a suspension of more than one-half of a member’s voting power.
3. During the effective period of a partial suspension of a member’s voting power, the number of votes subject to the partial suspension shall not be cast in any organ of the Bank; nor shall they be included in the calculation of the total voting power. Other consequences, if any, of a partial suspension of voting power shall be as prescribed by the Board of Directors at the time that it makes the determination described above in paragraph 2.

4. A partial suspension of a member's voting power pursuant to paragraph 2 above shall be reversed if the Board of Directors determines, by a vote of the Directors representing not less than a majority of the voting power of the members, that the member has returned to compliance with the prescribed standards for economic and financial performance.

5. Article 33(2) and Article 33(3) of the Agreement are hereby amended by adding in the first sentence of each, after the word "shall", the phrase ", subject to the provisions of Article 4 of the Protocol to the Agreement Establishing the Asian Development Bank".

6. The provisions of Article 33 and other Articles of the Agreement referring to voting power and to the casting of votes shall be subject to the provisions of paragraphs 1 through 4 above.

Article 5. Human Rights and Social Dimensions of Development

1. The Bank shall take all action necessary and appropriate to ensure

- (a) that it follows, and sees that any recipient of Bank financial assistance follows, adequate procedures to assess in advance the social impact of any development projects for which Bank financing is used,
- (b) that no person directly affected by any development project for which Bank financing is used is worse off than before such project was undertaken,
- (c) that it observes and promotes, both in its own operations and in its dealings with members, the respect for and protection of human rights and fundamental freedoms, and
- (d) that it acts consistently with the rules and principles of international law on human rights.

2. Each member of the Bank shall comply with the following treaty provisions, subject to (i) any permissible reservation that the member has made pertinent to one or more of those provisions upon becoming a party to the treaty at issue or (ii) if the member is not a party to the treaty in question, any qualifying declaration that the member transmits to the Bank on or before the date that the member deposits with the Secretary-General of the United Nations its instrument of ratification to this Protocol, provided that such qualifying declaration would be permissible as a reservation under standards used for this purpose by the Secretary-General of the United Nations pursuant to Articles 19 through 23 of the 1969 Vienna Convention on the Law of Treaties.

- (a) Articles 1 through 28 of the International Covenant on Civil and Political Rights (1966);
- (b) Articles 1 through 7 of the International Convention on the Elimination of All Forms of Racial Discrimination (1966);
- (c) Articles 1 through 16 of the Convention on the Elimination of All Forms of Discrimination Against Women (1979);

- (d) Articles 1 through 16 of the Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (1984); and
- (e) Articles 1 through 41 of the Convention on the Rights of the Child (1989).

Article 6. Environmental Protection

1. The Bank shall take all action necessary and appropriate to ensure
 - (a) that it follows, and sees that any recipient of Bank financial assistance follows, adequate procedures to assess in advance the environmental impact of any development projects for which Bank financing is used,
 - (b) that its operations do not create undue harm to the physical, human, or cultural environment in the region,
 - (c) that it observes and promotes, both in its own operations and in its dealings with members, sound principles of environmental management and improvement, and
 - (d) that it acts consistently with the rules and principles of international law on environmental protection and management.

2. Each member of the Bank shall comply with the following treaty provisions, subject to (i) any permissible reservation that the member has made pertinent to one or more of those provisions upon becoming a party to the treaty at issue or (ii) if the member is not a party to the treaty in question, any qualifying declaration that the member transmits to the Bank on or before the date that the member deposits with the Secretary-General of the United Nations its instrument of ratification to this Protocol, provided that such qualifying declaration would be permissible as a reservation under standards used for this purpose by the Secretary-General of the United Nations pursuant to Articles 19 through 23 of the 1969 Vienna Convention on the Law of Treaties.
 - (a) Articles I through XIV of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) (1973);
 - (b) Articles 1 through 4 of the Vienna Convention for the Protection of the Ozone Layer (1985), and pertinent provisions of the Protocols thereto and of the Amendments to those Protocols;
 - (c) Articles 1 through 9 of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal (1989);
 - (d) Articles 1 through 20 of the Convention on Biological Diversity (1992); and
 - (e) Articles 7 through 12 of the Kyoto Protocol on Global Warming (1997).

About the Author

John Head is a professor of international and comparative law at the University of Kansas. He holds an English law degree from Oxford University (1977) and a US law degree from the University of Virginia (1979). Before starting an academic career, he worked in the Washington, D.C. office of Cleary, Gottlieb, Steen & Hamilton (1980–1983), at the Asian Development Bank (AsDB) in Manila (1983–1988), and at the International Monetary Fund (IMF) in Washington (1988–1990). Both his teaching and his published works concentrate on the areas of international financial institutions, international trade regulation, international public law, comparative law, and dynastic Chinese law. His principal books include *Global Business Law: Principles and Practice of International Commerce and Investment* (2006), *Global Economic Organizations: An Evaluation of Criticisms Leveled at the IMF, the Multilateral Development Banks, and the WTO* (2005), and *Law Codes in Dynastic China* (2005, with Yanping Wang). He has taught in Austria, China, Hong Kong, Jordan, Mexico, Mongolia, Turkey, and the UK and has undertaken special assignments in numerous locations for the AsDB, the IMF, the European Bank for Reconstruction and Development, the Agency for International Development, the United Nations Development Program, and other agencies. Mr. Head and his wife, Lucia Orth, live in the quiet wooded countryside southwest of Lawrence, Kansas.

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World Bank	http://www.worldbank.org
WTO	http://www.wto.org

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