

may be the platform for a second conference on the UN, human rights and post-conflict situations, resulting in a second publication by White and Klaasen. White's constructive suggestion that the political organs of the UN *formally* recognize the applicability of international human rights standards to UN activities would constitute a step in the right direction.<sup>33</sup> Member states would then perhaps more forcefully provide the means and resources to ensure that at least the core set of rights, customary human rights,<sup>34</sup> are always applied, respected, ensured and fulfilled.

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Mac Darrow. ***Between Light and Shadow, The World Bank, The International Monetary Fund and International Human Rights Law.***

Oxford: Hart Publishing, 2003. Pp. 376. Hbk £42; pbk £25. ISBN 1-84113-390-6.

Bahram Ghazi. ***The IMF, The World Bank Group and the Question of Human Rights.*** Ardsley, NY:

Transnational Publishers, 2005. Pp. 468. \$135. ISBN 1-57105-185-6.

The World Bank and the International Monetary Fund (IMF) have a long and controversial relationship with human rights. The objectives of the Bretton Woods organizations as well as early development discussions were largely, if not entirely, based on a limited understanding

of development as economic development. This approach has been shown to be untenable in a variety of settings, with detrimental effects ranging from ecological to human disasters. One need only recall the Polonoroeste resettlement project in Brazil, or the sadly famous dam projects in India sponsored by the World Bank. Public outrage against such momentous failures prompted an extensive output of academic literature, which recorded and criticized the negligence of the World Bank and the IMF with respect to human rights concerns. With *Mortgaging the Earth*, for instance, Bruce Rich provided a bleak and deeply disturbing account of particularly tragic cases.<sup>1</sup> The debate is, thus, not new.<sup>2</sup>

Recently, however, the framework for development cooperation and its objectives has experienced a substantial transformation. Nowadays, a wider range of human rights concerns is integrated into development cooperation, so much so that they are sometimes incorporated into a 'human rights-based approach to development'. At the same time, the mandates of international financial institutions remain virtually unchanged, and their position with regard to human rights norms continues to be controversial. A question that still needs to be addressed is how to translate human rights into concrete and binding obligations to limit the activities of international financial institutions. This very question is the subject matter of the two books

<sup>1</sup> B. Rich, *Mortgaging the Earth* (1994).

<sup>2</sup> See, e.g., Conklin and Davidson, 'The IMF and Economic and Social Human Rights: A Case Study of Argentina, 1958-1985', 8 *HRQ* (1986) 227; Cahn, 'Challenging the New Imperial Authority: The World Bank and the Democratization of Development', 6 *Harvard Human Rights Journal* (1993) 159; Bradlow and Grossman, 'Limited Mandates and Intertwined Problems: A New Challenge for the World Bank and the IMF', 17 *HRQ* (1995) 411; E. Denters, *Law and Policy of IMF Conditionality* (1996); Handl, 'The Legal Mandate of Multilateral Development Banks as Agents for Change toward Sustainable Development', 92 *AJIL* (1998) 642 and S. Skogly, *Human Rights Obligations of the World Bank and the IMF* (2001).

<sup>33</sup> White, 'Towards a Strategy for Human Rights Protection in Post-conflict Situations', in *The UN, Human Rights and Post-conflict Situations*, at 463.

<sup>34</sup> Right to life, right to personal security, basic principles of due process, freedom from arbitrary arrest and detention, freedom from torture, freedom from slavery and racial discrimination as well as fundamental economic rights that are implicit in the right to life. White, *ibid.*, at 463.

under review: Mac Darrow's *Between Light and Shadow: The World Bank, The International Monetary Fund and International Human Rights Law*, and Bahram Ghazi's *The IMF, The World Bank Group and the Question of Human Rights*. The overall aim and message of both books is fairly clear. For both, the starting point is that there are some core international human rights obligations which the World Bank, the IMF and the affiliated financial institutions should respect. Darrow maintains that the six core human rights treaties lay down these standards (at 6).<sup>3</sup> It is hard to disagree that these treaties, at least to the extent that they reflect customary law, should provide a benchmark for the evaluation of development policies of the Bank and the IMF from a legal perspective, all the more so since it is widely acknowledged that the policies of these institutions may greatly influence, directly or indirectly, the realization of human rights. What is more, the loans and their conditions may interfere with the capacity of member states to fulfil their human rights obligations. As Darrow points out, 'having money on the table' and the capacity to introduce policy reforms should also incur some form of responsibility, at least on moral grounds' (at 62–63). Both books, of course, go beyond the moral debate to attempt an argument that the World Bank and the IMF, as international organizations and also as UN specialized agencies, are bound by international human rights law; additionally, they seek to ascertain the extent of such obligations.

Whether and to what extent international organizations are bound by international human rights standards is a complex issue.

<sup>3</sup> The International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Convention on the Elimination of All Forms of Discrimination Against Women, and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

This is not a mere inquiry into the applicability of human rights norms to these organizations. It entails many broader questions, such as the nature of human rights norms, normative conflicts between sources of international law, the interpretation of treaty obligations generally and particularly under constitutive treaties, and so forth. Given this demanding task, the efforts of both authors are highly welcome; and it would be wrong to judge them harshly if the attempt to answer such a variety of complex and interdisciplinary questions should prove to be more of a heuristic exercise than a conclusive resolution.

Evidently, how the policies and activities of the World Bank and the IMF may impact the realization of human rights is not purely a legal question. The development of societies is also a complex sociological, historical, cultural, economic and religious problem, which is in many regards beyond the proficiency of mere lawyers. Moreover, as Darrow points out, it is often a difficult task to compare hypothetical situations in which human rights may or may not have been taken into account, and the causal relationship between human rights and what a certain situation might have been (at 55). Trying to imagine the impact of human rights and their implementation in society calls for the cooperation of experts from different fields. Therefore, the correct parameters of development cooperation are by no means addressed sufficiently through purely legal debates. The two books may, at best, provide a narrow insight into extremely complex problems of under-development and poverty. Yet the legal problems themselves merit careful consideration and discussion. What kind of human rights obligations are the international organizations bound by? How may the constitutive agreements of international organizations be reconciled with customary human rights law or human rights treaties? And do human rights have priority over other treaty obligations?

Both books approach the issue from a similar angle. They introduce the institutions, their mandates and current policy choices in relation to human rights. They show that, traditionally, these institutions have claimed that

they are not allowed to take human rights into account due to the limitations in their mandates. The World Bank, for instance, has argued that its Articles of Agreement permit decision-making based only on economic considerations. Yet, in reality, their policies, as both books amply show, have effectively begun to take into account environmental and human rights considerations. Nevertheless, these policies remain incoherent and the institutions are reluctant to accept solid, legally binding human rights obligations.

Each book provides abundant evidence of the current debate in both institutions, leaving the reader in no doubt that the positions of the institutions are far from clear, and that there is both a need and room for clarification and legal argumentation. On this account, the authors must be given credit. Darrow's book is a well-written, in-depth study of the topic. He provides a dense account that is rich in detail, so rich, in fact, that it may at times render the issues difficult to follow for those who are not at all familiar with the debate. At the same time, this wealth of detail makes the book more valuable for those who wish to deepen their knowledge of the current debate. Ghazi, in turn, provides a fairly straightforward account of the basic issues, choosing a style which is more reminiscent of a textbook and therefore more accessible to the reader, but at times somewhat thin in its analysis.

By and large, both books focus on three separate issues. First, as already described above, they attempt to show the failures of the Bretton Woods institutions when it comes to taking human rights into account. Secondly, they try to identify and apply relevant human rights standards to these institutions within their constitutional framework. And thirdly, they consider policy proposals. In analysing the two latter questions, each of these books make a contribution to a better understanding of the issues related to the human rights obligations of international organizations.

One main interest of this book review is, of course, to find out how successful the authors are with their legal argumentation. In order to address this issue, three questions need to be raised. First, to which human rights obligations

are these institutions purportedly subject, and on what are they based? Both Darrow and Ghazi conclude that the World Bank and the IMF are each bound by all obligations under their constitutions, international agreements to which they are party, and general international law, including human rights law. Of course, this approach omits many of the international human rights treaty standards. Darrow puts forward an interesting argument on the extent of obligations of these institutions as specialized agencies of the UN. He suggests that, because of their relationship to the United Nations, they are bound by the objectives of the UN Charter and the human rights obligations established therein, creating at least some minimum human rights standards on the basis of Articles 55–57 of the UN Charter (at 124–128). Ghazi bases his argument more strongly on the idea of legal personality as a basis for legal obligations. He discusses the nature of limited legal personality of international organizations, attempting to show that, despite such personality, international organizations may not escape their human rights obligations under international law (at 99–127). He also points to Article 2(1) of the International Convention on Economic, Social and Cultural Rights as the basis for further cooperation. That article stipulates that steps should be taken individually *and through international cooperation* to achieve fulfilment of the rights laid down in the Convention. In his opinion, this could provide the basis for an obligation of the members of the organization to ensure the application of human rights through the World Bank and IMF. His suggestion is further supported by the fact that approximately 70 to 80 per cent of the members of these institutions are parties to both UN Covenants on Human Rights, a fact that would seem to indicate that the members are in a good position to promote these rights through international cooperation (at 136–137).

If we now accept that the World Bank and the IMF are under an obligation to act in accordance with human rights standards, either because of customary law or treaty obligations, we still face the question of how to solve normative conflicts between the

constitutive instruments of these institutions and other sources of law. This is the second question raised in both books. Obviously, the problem of normative conflicts has recently been given much attention in the literature on the fragmentation of international law.<sup>4</sup> In this particular case, it is effectively a question of the relation between an international constitutive agreement and customary law and treaty law. Generally, it is accepted that international agreements may derogate from customary international law as well as treaty law. To what extent can an international agreement effectively derogate from human rights norms, however? Are human rights possibly different in nature than other rights and obligations under international law?

One line of argument suggests that human rights are superior or at least norms of a special nature, and that they should therefore be given priority in the event of a treaty conflict. This is Ghazi's position, and, in many ways, the weakness of his argumentation. Although he openly admits that he sees human rights as something which 'should always primarily be taken into account' (at 306), a morally admirable position that gives a tone to the entire book, his view would have benefited from more legal substantiation. If human rights are indeed special in nature because of their hierarchical relation to other norms, such argument should have been fully developed in the book to give the reader a chance to evaluate its merits, particularly when considering that the existence of hierarchy is not generally recognized under international law. Alternatively, an argument could have been made, for instance, that human rights could be seen as integral obligations, if we chose to use the language

employed by Gerald Fitzmaurice. Throughout the book, for his part, Darrow has a more critical approach to human rights. Although his book also attempts to show the relevance of such considerations, he is more aware of the limits and difficulties of implementing human rights in this context.

Another way of giving a role to human rights norms in the context of the constitutive instruments is to attempt to reconcile conflicts between human rights and the constitutive agreements. Both authors suggest taking this path of interpreting the mandates in a manner which allows human rights to be taken into account and effectively reconciles economics with human rights considerations. Neither of the mandates of the institutions mention human rights, and their wordings vary with regard to the possible exclusion of human rights consideration. Current policies, as an indication of subsequent practice, suggest that the institutions themselves have opened the door to a wider interpretation which may allow environmental and human rights considerations to be taken into account. Beyond doubt, an extensive interpretation of the constitutive agreements is a plausible path. Both Darrow and Ghazi refer to Articles 31 and 32 of the Vienna Convention on the Law of Treaties (VCLT) and the different principles of interpretation expressed therein. They do, however, seem to ultimately shun the issue as being too difficult (Darrow, at 115; Ghazi, at 114). Yet this seems to be the key issue to this reviewer, namely to establish that if the human rights obligations of both institutions are thought to be solid, then there are compelling reasons to interpret the mandates so as to bring them into harmony with human rights standards.

Both writers also correctly point to the controversial paragraph in Article 31(3)(c) of the VCLT, which allows consideration of 'any relevant rules of international law applicable in the relations between the parties.' It would have been of particular interest to test Article 31(3)(c) as a potential tool to allow the mandates to be interpreted in the light of human right law as it stands today. This paragraph allows an incorporation of legal rules outside

<sup>4</sup> See, e.g., S. Ali Sadat-Akhavi, *Methods of Resolving Conflicts between Treaties* (2003); J. Pauwelyn, *Conflict of Norms in Public International Law: How WTO Law Relates to other Rules of International Law* (2003); and M. Koskenniemi, *The ILC Report on the Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law*, UN Doc. A/CN.4/L. 682, 13 April 2006.

the agreement itself, and perhaps makes it possible to take human rights treaties which the institutions are not party to into account. Of course, this would also have raised the difficult question of the inter-temporal aspect of treaty interpretation. How should an agreement establishing an international institution be interpreted in the light of customary human rights standards which evolved after its creation? What the two writers do, in the end, is to advance the potential of these ideas, but they only take them half-way. An in-depth discussion of potential solutions for such normative conflicts would have been an interesting addition to the current academic debate. This reviewer, at least, would have appreciated a more solid legal argument to substantiate the claim that the constitutive instrument should be interpreted in the light of current international human rights standards.

In their final conclusion, both Darrow and Ghazi suggest that the constitutive agreements of the World Bank and the IMF do not impose any strict limitations to alternative policy options. The third question, then, is what are these policy options, and how can these institutions apply human rights in their project-planning and implementation? Darrow provides a noteworthy analysis and set of ideas on how the institutions could enhance their 'approval culture', that is, they could institute transparency and accountability mechanisms to improve individual projects and institutional performance, and perform impact analysis. His ideas not only provide a concrete approach to strengthening the manner in which human rights considerations are taken into account, but they also illustrate the complexity of the problems faced by these institutions, starting from such concrete issues as staffing profiles to the more complex matters of decision-making and policy implementation.

Ghazi first offers some reflections on accountability by judicial mechanisms; this approach is considerably narrower and less flexible, but he goes further to discuss the applicability of specific human rights standards, such as the right to self-determination,

non-discrimination, right to life, and so on. This is a step in the right direction, but unfortunately he only touches the surface of the issue. He also calls for democratization and transparency of the two institutions. These final chapters make it clear that there is a distinct need for action, and that concrete measures exist which can be taken, as is shown, in particular, by Darrow's careful survey. To what extent the World Bank and the IMF are willing to take the necessary steps remains to be seen. Obviously, with limited political will, it is difficult to solve such complex issues. We may hope that the discussion and policy suggestions provided by Darrow and Ghazi may engender further debate among the many arenas of development cooperation. Yet, even in this case, the form and scope of potential solutions still require further consideration.

These studies clearly convey the impression that human rights concerns must be placed at the forefront of the development debate. At the same time, we must not forget that their role in this debate is of a guiding nature only. Human rights language operates at the meta-level, offering little concrete guidance when it comes to determining a specific course of action or formulating direct recommendations or prohibitions so as to influence the decision-making process in a particular project. What human rights bring to the debate is more aptly described as guidance for choices and for weighing different interests against each other. We must also remember that human rights may occasionally contradict each other, and, in such cases, there are no answers as to how certain human rights should be weighed against other human rights. Finally, one should not forget that economic development is also an essential part of the development discussion, even if we accept that economic objectives should not compromise human rights. Even then, however, one should not be led to think that human rights will perform miracles in the achievement of the increased well-being for individuals. The underlying problems are far too complex. A shift from an economic focus to a human rights focus would not solve the

multifaceted problems of societies and their development. Human rights are, perhaps, no more than another language for addressing these problems. One language or one approach will never alone provide a solution.

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Max Hilaire. **United Nations Law and the Security Council**. Aldershot; Burlington, VT: Ashgate, 2005. Pp. 333. \$99.95. ISBN 0754644898.

Catherine Denis. **Le Pouvoir normatif du Conseil de sécurité des Nations Unies: portée et limites**. Bruxelles: Editions Bruylant; Editions de l'Université de Bruxelles, 2004. Pp. 424. €75. ISBN 2-8027-1943-2.

The point of departure for the two books under review is the increased activity of the Security Council since the beginning of the 1990s. There is a sense of concern on the part of both of the authors that the Security Council is moving too far away from its mandate under the United Nations Charter. They each examine the tendency of some permanent members to hijack the Security Council and (ab)use it for their own purposes rather than for the purposes of the international community as a whole, with legally dubious resolutions as a result. These similarities aside, the books under review are very different in form and content.

Hilaire's work is broad, descriptive and rich in information on the actions of the Security Council since its creation, mostly under chapter VII of the UN Charter. Hilaire's book is policy-oriented, with an open door towards political considerations, which inevitably intertwine with legal considerations in a discussion of the Security Council. The form of the book, its large number of case studies grouped under different headings (based on the kind of conflict involved) and followed by legal

analysis, makes the book seem suitable as an introductory textbook for those who may want or need to know more about the Security Council. Thanks to the wealth of information it contains on the practice of the Council, the book may also serve as a useful reference book, even for those who are already familiar with the subject. The lack of a detailed table of contents, however, reduces its value as a reference book, although the detailed index may partly compensate for this.

The book by Denis is a deep and analytical work of meticulous research aimed at a highly qualified audience. Previously presented as a doctoral dissertation, it is narrower in scope than Hilaire's book, or more focused. At the same time, however, it is also more informative when it comes to the debates held within the Security Council and the General Assembly on the issues under study. It is a clear, coherent and consistent work, with a limited number of questions concerning the normative power of the Security Council in international law effectively running through the book as a whole. The book is legal in style and content, and shows less interest in politics than does Hilaire's volume. Far from being bloodless and boring, however, Denis's book belongs to the rare category of international legal research that manages to combine intellectual rigour with passionate argumentation, all in a highly readable form. The result is an impressive work indeed – solid and innovative at the same time. Denis's book constitutes an important contribution to the current research on the capacity of the Security Council to affect international law. Indeed, while this review will examine both of these books, greater attention will be devoted to the volume by Denis, given its importance as a contribution to the literature.

The large number of case studies comprising Hilaire's book are grouped under rather randomly chosen rubrics in the table of contents. Sometimes the rubrics refer to the legal or constitutional arrangements involved (such as delegation of authority or the