Introduction

The activities of the International Financial Institutions (IFIs)\(^1\) have a significant impact on people’s lives and their human rights. The obligations of the IFIs regarding human rights have been a hotly debated issue over the last few years, notably in the UN Sub-Commission on Human Rights and the Commission on Human Rights which adopted several resolutions and decisions regarding the negative effects of Structural Adjustment Programmes (SAPs) on the full enjoyment of human rights.\(^2\) In addition, the negative influences of the World Bank’s development projects – such as involuntary evictions and serious environmental and social impacts – also have been criticised.\(^3\)

From this perspective, this book argues that human rights standards should be developed in order to hold IFIs accountable for their decisions and for the impacts of their operations. As the Special Rapporteur on the right to food has observed: “These organizations are so powerful today that they have enormous influence on the policy and programmes of national governments, particularly in the poorer, weaker countries that are heavily indebted to the international financial system.”\(^4\) Thus, I argue in support of Reinisch who observes that:

\(^1\) The term Multilateral Development Banks (MDBs) refers to the World Bank Group and four Regional Development Banks including ADB. The term International Financial Institutions (IFIs) refers to MDBs plus IMF. This book will use “MDBs” for issues particularly related to Development Banks and “IFIs” for issues of financial institutions generally.


\(^3\) E.g., J. Fox and L. Brown (eds), The Struggle for Accountability: the World Bank, NGOs, and grassroots movements (MIT Press 1998), especially Part II.

If it is true that “with power comes responsibility” then it is only logical to demand human rights observance by those non-state actors which are now as powerful as some states and may thus violate human rights in the same way as states.5

Accordingly, this book will examine the World Bank and the Asian Development Bank (ADB) as two of the world’s most powerful inter-state actors and IFIs.

In the area of scholarly research on IFIs and human rights, the focus has been mainly on the World Bank and the IMF. This is probably due to the worldwide membership and influence that these institutions can command. As UN specialised agencies, these institutions can easily draw both attention and criticism from within the UN and from other actors in the human rights arena. In addition, they (especially the World Bank) are seen by other regional IFIs as a benchmark for preparing and conducting policies and activities. Moreover, by being based in Washington DC, US experienced activists and NGOs can easily draw attention to any problems arising with these institutions.

It is interesting that there has been no scientific or empirical human rights research concerning ADB. This is remarkable because ADB is the second largest institution operating in the field of development in Asia and the Pacific. Indeed, its size and impact is growing following its member countries’ agreement in 2009 to triple ADB’s capital.6

5 A. Reinisch, “The Changing Legal Framework for Dealing with Non-State Actors” in P. Alston (ed.) Non-State Actors and Human Rights (Oxford University Press 2005), 37–89 at 74, 75. Regarding the limited treatment of non-state actors in the current international legal regime, Alston criticises international legal practice for preventing reform of this limitation. He summarises the problems as follows: “(i) the international legal framework is and will remain essentially state-centric; (ii) there is a very limited formal role for other international actors, although their participation in international decision-making processes is often desirable; (iii) transnational corporations should perhaps accept some moral obligations: but (iv) they have no clear legal obligations in respect to human rights apart from compliance with the law of the particular country in which they are operating. This is hardly a clarion call for reform … ” P. Alston (2005), “The ‘Not-a Cat’ Syndrome” in P. Alston (ed.) Non-State Actors and Human Rights (Oxford University Press 2005) 3–36 at 36.

6 This capital increase [Ordinary Capital Resource (OCR) 5] triples ADB’s capital bases from $55 billion to $165 billion. ADB, “Over 80% of ADB Member Countries Subscribe to General Capital Increase” (28 January 2011) http://beta.adb.org/news/over-80-adb-member-countries-subscribe-general-capital-increase (last accessed 15 July 2011). By contrast, the capital of other
world’s population, and more than 600 million people in the region still live in absolute poverty (defined as living on less than $1 a day). Almost half of the world’s poorest people live in South Asia. ADB therefore has considerable influence on the lives of a great number of people, including the poor. ADB presents similar human rights problems to the World Bank – NGOs have been criticising ADB for the negative effects of its activities. Therefore, ADB similarly deserves to be subject to close scrutiny and careful analysis.

Considerable research has been conducted by human rights scholars and activists on the human rights impact of the programs of the World Bank and IMF. One of the principal areas of research explores a legal argument that endows IFIs with human rights obligations. Currently, international human rights law does not provide any mechanism for dealing with non-State actors, though some work has been done to try to tackle this problem.

MDBs after the increase is: the World Bank (IBRD), $270 billion; Inter-American Development Bank, $170 billion; African Development Bank, $104 billion; European Bank for Reconstruction and Development (EBRD), 30 billion Euros.

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9 Unlike the World Bank and IMF, ADB is not a UN specialised agency and does not have a legal relationship with the UN. However, since the UN treats human rights problems caused by a variety of actors outside the UN system, such as transnational co-operations, regional IFIs including ADB can be the subject of discussion of the UN.
11 See e.g., Skogly, ibid.
12 See e.g., Alston (n 10); A. Clapham, Human Rights Obligations of Non-State Actors (Oxford University Press 2005).
International law applies only to States. Under the traditional concept of human rights, only States are considered to be bound by human rights law – thus only State behaviour can lead to responsibility under international law. The State is still seen as the predominant actor in international law. However, there is now a growing perception that other entities, such as international organisations, individuals and companies, have gained some degree of international legal personality, and their human rights obligations are being discussed. For instance, the UN Committee on Economic, Social and Cultural Rights considers non-State actors’ obligations regarding the right to health:

While only States are parties to the Covenant and thus ultimately accountable for compliance with it, all members of society – individuals, including health professionals, families, local communities, inter-governmental and non-governmental organizations, civil society organizations, as well as the private business sector – have responsibilities regarding the realization of the right to health.

This movement demanding human rights accountability on the part of non-State actors, including IFIs, has been growing. Arguments regarding the human rights obligations of IFIs consider mainly two inter-related approaches: member countries’ human rights obligations in relation to IFIs and, second, the obligations of the organisation itself. As shorthand, this book labels the former an “indirect approach” and the latter a “direct approach”.

In the arena of international law, fundamental actors are States. IFIs are States’ innovations and are controlled by States. Therefore, the indirect route will be examined first.

I.1 INDIRECT APPROACH

IFIs are composed of governments. These governments have human rights obligations stemming from the UN Charter and other human rights

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instruments. They are obliged to respect human rights, not only domestically, but also when they are acting internationally.\footnote{Skogly (n 10) 109.}

Thus, as Skogly argues:

> These obligations are not directly transferred to the two institutions as such (as they are separate international legal personalities), but the governments are obliged to ensure that the organisations operate in a manner consistent with the human rights provisions of the UN Charter, and other general principles of international law and international human rights law.\footnote{Ibid.}

She continues that “the human rights obligations that each individual State has voluntarily accepted are retained when acting through the IMF and the World Bank.”\footnote{Ibid 107.} Skogly expands her argument that States have human rights obligations in inter-governmental organisations by referring to the theory of States’ extra-territorial obligations, which deals with diagonal obligations – the relationship between a State and individuals in another State – as opposed to vertical obligations, which occur within the jurisdiction of a single State (i.e. the State-individual relationship), or horizontal obligations among States (i.e. the State-State relationship). She suggests that the strict territorial application of human rights obligations is now outdated and argues that human rights obligations may well extend beyond national borders; as such, inter alia, principles of State responsibility need to be applied more systematically to States’ human rights violations in foreign countries.\footnote{S. Skogly, “The Obligation of International Assistance and Co-operation in the International Covenant on Economic, Social and Cultural Rights” in M. Bergsno (ed.) Human Rights and Criminal Justice for the Downtrodden: Essays in Honour of Asbjorn Eide (Marinus Nijhoff 2003) 403–420 at 403–407; S. Skogly, Beyond National Borders: States’ Human Rights Obligations in International Cooperation (Intersentia 2006) 4, 5, 203. This approach was applied by Ziegler. He argues that all countries should ensure that their policies do not contribute to human rights violations in other countries, and states that countries “must respect, protect and support the fulfilment of the right to food of people living in other territories, to fully comply with their obligations under the right to food.” E/CN.4/2006/44 (n 4) paras. 28, 34.}

Based on this theory, Skogly argues that States cannot avoid their human rights obligations in their activities as members of inter-governmental organisations, including IFIs.\footnote{Skogly, Beyond National Borders, ibid.196.}
The Committee on Economic Social and Cultural Rights also emphasises Member States’ obligations when they act as members of IFIs, either as recipient countries or donor countries. For instance, with reference to Egypt as a recipient country, the Committee states:

The Committee strongly recommends that Egypt’s obligations under the Covenant should be taken into account in all aspect of its negotiations with international financial institutions, like the International Monetary Fund, World Bank and World Trade Organization, to ensure that economic, social and cultural rights, particularly of the most vulnerable groups, are not undermined.20

In addition, with reference to a developed State:

The Committee encourages the Government of Italy, as a member of international organizations, in particular the International Monetary Fund and the World Bank, to do all it can to ensure that the policies and decisions of those organizations are in conformity with the obligations of State parties to the Covenant, in particular the obligations contained in article 2(1) concerning international assistance and cooperation.21

The Maastricht Guidelines22 also state that:

[It]he obligations of States to protect economic, social and cultural rights extend also to their participation in international organizations, where they act collectively. It is particularly important for States to use their influence to ensure that violations do not result from the programmes and policies of the organizations of which they are members.23

IFIs have human rights obligations via the indirect route. That is, as Hunt argues, Member States do not just shed these obligations upon entering

22 Elaborated by a group of more than 30 experts under the auspices of the International Commission of Jurists, the Urban Morgan Institute for Human Rights, and the Centre for Human Rights of the Faculty of Law of Maastricht University.
an IFI. This argument is important, not only for international assistance and cooperation through multilateral development agencies, but also for setting standards of accountability, transparency or any safeguards within these institutions. Each member country is required to meet international human rights standards including, for instance, the right to access to justice (a fair trial) or access to information in their countries. This standard should not be lower when States act through international organisations. That is to say, in the establishment and review of policies and mechanisms of accountability or transparency, or any safeguard policy in these institutions, Member States should not lower the standard binding upon them whether by virtue of domestic law or international law which they are applying (or which they are expected to apply) in their countries. Therefore, States should collectively set standards for IFI mechanisms which accord with their own standards.

However, difficulties arise from the fact that States have shared responsibilities in international institutions. It is difficult, in practice, to hold each State fully accountable for the conduct of an entire IFI. Thus the indirect approach is not sufficient to improve institutions’ accountability. In addition, not all States ratify all human rights treaties and the human rights obligations of each State differ depending accordingly. These facts cause additional complications when trying to hold IFIs accountable via Member States.

The second perspective to consider is that of intergovernmental organisations themselves – not so much as agents of States but as actors in themselves to be held directly accountable and responsible. If this does not occur, then there is a gap between effective accountability and responsibility which is to the detriment of the intended beneficiaries.

I.2 DIRECT APPROACH

The direct accountability of non-State actors is underdeveloped in human rights instruments and in international law in general. Discussion on the direct approach regarding IFIs’ human rights obligations looks at this issue on the basis of three characteristics of IFIs: through IFIs’ international legal personality, through their status as UN specialised agencies, and through their own mandates and commitments.

I.2.1 Obligations through International Legal Personality

Both the World Bank and ADB have an international legal personality. International legal persons subject to the provision of international law will have rights and obligations stemming from treaty law, customary international law, general principles of law, and jus cogens. Among these sources, some provisions in the Universal Declaration of Human Rights (UDHR), as customary international law, are frequently cited as a source of IFIs’ human rights obligations.

In Skogly’s opinion, since neither the World Bank nor the IMF is party to any human rights treaty, they do not have the same obligations as States. They have a duty simply to respect human rights or not to make the situation worse. They only have limited obligations to protect human rights, for instance, through a careful choice of sub-contractors. Skogly sees no duty on the Bank or the IMF to fulfil any human rights obligations. However, Darrow interprets the obligations of these institutions more widely. Moreover, Clapham suggests:

… if the entity has sufficient legal capacity to be the bearer of international obligations, the relevant obligations include multiple aspects of the appropriate customary international law of human rights. The international financial institutions can therefore be said to have obligations, not only to respect human rights, but also to protect and even fulfil human rights in appropriate circumstances … The customary law obligation will go beyond a simple injunction to respect the prohibition on racial discrimination in their activities, or to refrain from acting in a way that immediately denies people the right to life, or which involves facilitating forced labour. The customary obligation

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25 For elements of an international legal personality, see e.g., I. Brownlie, Principles of Public International Law (5th edition, Oxford University Press 1998) 680; Higgins (n 13) 47; Skogly (n 10) 64. Skogly identifies the World Bank’s international legal personality through the international nature of its mandate and staff, legal personality, privilege and immunity, and ability to enter into and conclude international agreements. These elements can also be found in ADB’s Articles of Agreement: possession of legal personality (Art. 49), privilege and immunity (Arts 50–56) and ability to enter into agreement (Art. 49). Therefore, ADB also has an international legal personality. Accordingly, as the General Counsel of ADB says, ADB is also subject to international law. Interview with Mr Arthur Michel, General Counsel, ADB (5 May 2005, Istanbul).

26 The extent to which the UDHR’s provisions are binding as a matter of customary international law is an issue of ongoing dispute, Darrow (n 10) 130.

27 Skogly (n 10) 151, 193.

28 Darrow (n 10) 132, 133.
will be to avoid directly violating any human rights and to avoid complicity in someone else’s violation of human rights obligations.29

In addition, on the basis of studies by academic institutions and NGOs, Ziegler (then UN Special Rapporteur on the right to food) discusses the three levels of responsibility of international organisations regarding the right to food: “respect”, “protect” and “support the fulfilment”. The obligation to respect is a minimum obligation, which requires IFIs to ensure that their advice, policies and practices do not lead to violations of the right. This means that IFIs have minimum negative obligations to respect, or not to do harm, in relation to the realisation of the right. Therefore, these organisations should not promote “development” projects that would result in situations which harm the realisation of human rights such as forced displacement or the destruction of sources of livelihood. Moreover, Ziegler argues that IFIs should not increase people’s food insecurity in a given country, for instance, by applying adjustment measures. Such measures should not be implemented without carrying out impact studies on vulnerable groups.30 The obligation to protect requires international organisations to ensure that their partners, such as States or private actors, including transnational corporations, do not violate human rights.31 The obligation to support the fulfilment of a right requires IFIs to facilitate the realisation of the right and to provide necessary assistance when required for all people, including Indigenous Peoples, minorities and vulnerable groups.32

I.2.2 Obligations as a UN Specialised Agency

One of the common explanations given by scholars for the existence of the Bank’s human rights obligations stems from its status as a UN specialised agency. For instance, Tomasevski argues that as the World Bank is part of the UN system, it is bound by the UN Charter which proclaims the promotion of human rights as one of the main purposes of international cooperation.33 Hunt also states that international human rights obligations adopted by the UN should be extended to the World Bank because the Bank is a specialised agency of the UN and a major

29 Clapham (n 12) 151.
30 UN Doc. E/CN.4/2006/44 (n 4) para. 43.
31 Ibid para. 44.
32 Ibid para. 45.
international actor whose policies have a profound impact on the enjoyment of social and other rights around the world. Further, its programmes affect the ability of States to conform to their own international human rights obligations. 34 Although not a legal argument, politically this argument is very important.

Not everyone agrees, however; various legal scholars have put forward a different view. For instance, Yokota argues that since the UN Charter is a treaty, only member countries and organisations established by the treaty are bound by it. Specialised agencies would not be bound by the Charter because they are neither member countries nor organisations established by the Charter – a legal relationship between the UN and specialised agencies is established by an agreement between them. 35 Thus, Simma also concludes that “before the beginning of the relationship, a specialised agency does not yet have rights and duties of its own towards the UN.” 36 Judging from this argument, assigning the World Bank human rights obligations based on its status as a UN specialised agency may not be legally persuasive. However, it can also be said that this shows another example of the limitations of the current international legal regime which does not deal with non-state actors in the same way as States.

Contrary to such “traditional theories of international law”, Skogly argues that if there are any legal implications arising from the relationship agreement, then as a commentator and the Special Rapporteur on the draft Convention on the Law of Treaties between States and International Organizations state, 37 the World Bank (and the IMF) are “legally obligated not to conduct actions contravening principles and purposes of the UN Charter, and also to respect the Charter, including the human rights provisions.” 38 Skogly develops this argument based mainly on the discussion by the International Law Commission (ILC) regarding the

34 P. Hunt, Reclaiming Social Rights: International and Comparative Perspectives (Dartmouth 1996) 199.
35 Y. Yokota, Kokusaikiko no hou kouzou (Legal Structure of International Organisations) (Kokusai Shoin 2001) 227, 228.
37 Skogly notes that “Amerasinghe claims that international organisations may, in certain circumstances, assume obligations under treaties without being a party to them.” In addition, she quotes the statement of the Special Rapporteur: “ … it would be rather difficult to accept that international organisations, the vast majority of whose members are State Members of the United Nations, could disregard the rules of the Charter”, quoted in Skogly (n 10) 101.
38 Ibid 101.
**Introduction**

Vienna Convention on the Law of Treaties between States and international organisations. Accordingly, the ILC concludes that Article 103 of the UN Charter which provides for the supremacy of the UN Charter over any other international agreement, prevails in relation to treaties, first between States and international organisations, and secondly between international organisations. Skogly observes that the first point was also confirmed by the General Counsel of the World Bank.39 This point can be used to argue that agreements the World Bank enters into with its member countries, which are also UN member countries, will be subject to Article 103.40 Regarding the treaties concluded by international organisations, the UN Charter also takes precedence.41 This reasoning can be applied to any international organisations, including ADB.42

The World Bank’s independence from the UN is another important issue. Article 1(2) of the Agreement between the UN and the World Bank43 states their relationship: “By reason of the nature of its international responsibilities and the terms of its Articles of Agreement, the Bank is, and is required to function as, an independent international organisation.” Further, Article 4(1)(2) of the Agreement states:

2. Neither organisation, nor any of their subsidiary bodies, will present any formal recommendations to the other without reasonable prior consultation with regard thereto. Any formal recommendations made by either

40 Skogly (n 10) 102. In this context, the reasoning regarding World Bank’s human rights obligations is based on member countries’ obligations under the UN Charter (indirect approach).
41 Ibid 102.
42 It is worthy of notice that although regional financial institutions are not UN specialised agencies, in the Vienna Declaration, the UN suggests that both international and regional financial institutions conducts human rights impact assessments; “the World Conference on Human Rights calls on regional organizations and prominent international and regional finance and development institutions to assess also the impact of their policies and programmes on the enjoyment of human rights.” UN General Assembly (GA), “The Vienna Declaration and Programme of Action”, UN Doc. A/CONF157/23 (1993) Part II, para. 2.
organisation after such consultation will be considered as soon as possible by the appropriate organ of the other.

Yokota argues that these Articles do not put the UN in a higher position than the Bank but rather create equal relations between the two organisations. The same also applies to the relationship between the IMF and the UN. He argues that the World Bank and the IMF enjoy relative independence from the interference of the UN, and that this makes it difficult, if not impossible, for the UN to monitor or coordinate their activities in the same way as it does those of other specialised agencies. Regarding this point, Skogly argues that although the Bank is more independent from the UN than many other specialised agencies, there are some specialised agencies with even looser ties.

According to Skogly, the independence mandated by the Agreement is from interference by the UN, not from international law as represented by the UN Charter. Moreover, Skogly argues that the motive of Article 63(2), which provides that the Economic and Social Council “may co-ordinate the activities of the specialised agencies through consultation with and recommendations to such agencies and through recommendations to the General Assembly and to the members of the UN”, was to gather all possible resources for the promotion and fulfilment of the purposes of the organisation. The independent status of the World Bank does not change this aim, and should not be interpreted as lessening the obligation of the Bank to observe the principles and purposes of the UN. She concludes that “this independence is limited to the UN ability to direct the work of the two institutions, and not a ‘legal independence’ in terms of not being bound by the general principles and purposes of the Charter.”

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44 Yokota (n 35) 93.
45 Y. Yokota, “Note for comments on ‘the World Bank, the International Monetary Fund’” by S. Skogly at the conference of International Project on the Right to Food in Development Operationalising the Right to Food and Nutrition (21–22 August 2000) Geneva (unpublished paper).
46 Skogly cites Simma’s argument, which divides agreements between the UN and its specialised agencies into three groups. Here the relationship between the UN and the IMF and the World Bank is categorised as “relatively loose”, while that of the UN with most of the specialised agencies is “a close relationship” and that with the old agencies such as UPU and ITU is “less close”. Skogly (n 10) 104.
48 Ibid.
49 Ibid 109.
I.2.3 Obligations through Mandates and Commitments of the World Bank and ADB

The above discussion focuses on scholars’ debates concerning the direct approach. To these arguments, I would like to add the mandates and commitments of these institutions as other potential sources of their human rights obligations. The World Bank’s Articles of Agreement proclaim that one of the purposes of the Bank is “the encouragement of the development of productive facilities and resources in less developed countries.” ADB has an equivalent mandate, which aims “to contribute to the acceleration of the process of economic development of the developing member countries in the region, collectively and individually.” Development is an important aspect of both mandates. The indivisible relationship between development and human rights has been emphasised by many UN resolutions, notably by the Declaration of the Right to Development. Therefore, if they are to fulfil their mandate to promote the “encouragement of development”, these Banks cannot ignore human rights considerations in their operations.

As is well known, the World Bank and the IMF adopted Poverty Reduction Strategy Papers in 1999. ADB also adopted poverty reduction as its “overarching goal” in the same year. As a policy, poverty reduction is not legally binding, but it is a compelling element of their activities. There has been an increasing recognition of the negative impact of poverty on people’s ability to enjoy basic human rights and freedom since the late 1990s, when the UN system started to examine extreme poverty as a human rights issue. Not only is poverty reduction

52 UNGA Res. 41/128 (4 December 1986).
a method for achieving the realisation of human rights for the poor, human rights friendly development projects or policies are essential for effective poverty reduction. World Bank former Senior Vice President and General Counsel Danino also notes that “this conception of the alleviation of poverty has an especially strong human rights dimension.”

The World Bank and ADB also adopted the Millennium Development Goals (MDGs). Although the MDGs are not framed in terms of human rights, they are closely related to them and therefore, “Economic, social and cultural rights are at the heart of all the millennium development goals.” Danino also recognises that “each MDG can be traced to the furtherance of one or several core human rights” and points to human rights provisions to explain the link with each of the MDGs. Although the MDGs are not enshrined in an international treaty, Alston argues that judging from the large number of States committed to the MDGs, there is good reason to assume that elements of the MDGs are customary law.

Although further analysis may be needed before insisting that the World Bank and ADB have legally binding human rights obligations arising from these mandates and commitments, at least one can firmly


58 R. Danino, “The Legal Aspect of the World Bank’s Work on Human Rights: Some Preliminary Thoughts” in Alston and Robinson (n 10) 509–524 at 521. However, the World Bank’s understanding of human rights is not always the same as what international human rights law expects. This point will be discussed in Chapter 1.

argue that for the realisation of their mandates and formal commitments, these Banks need to take human rights into consideration.

I.3 HUMAN RIGHTS ANALYSIS OF POLICIES AND DIRECTIVES

I accept that the direct imposition of legal human rights obligations on the World Bank and ADB may as yet be undeveloped in international human rights law. However, considering the influence of these powerful institutions, it is essential to develop this approach as well.

At the same time, in reality, “although international organizations clearly have a legal existence that is independent from their Member States, their governance and thus their decision-making, is formally dominated by their Member States…”. The power balance between IFIs and Member States is not clear, thus direct and indirect routes are interlinked and not clearly separated.

As can be seen above, there has been some legal discussion about the human rights obligations of IFIs. However, the behaviour of these institutions has not been analysed much, either in terms of human rights norms and standards per se, or the evolving scholarly critics. Given the increased importance of IFIs, it is necessary to examine their obligations and behaviours, applying relevant standards.

The World Bank and ADB have Policies and Operational Manuals or Directives which are internal binding documents. Although the direct approach needs more theoretical development, there is the possibility of applying international human rights standards directly to IFIs. By including international human rights standards in the Banks’ own binding policies or directives, in theory, the possibility of applying such standards directly to these institutions exists. In fact, the Banks have been reacting to movements which seek to incorporate human rights standards within policies, and they have made an improvement to some extent. This book will analyse the Banks’ behaviour in this regard and efforts to improve policies, and the challenges that remain.

Many obligations developed in the framework of State responsibilities do not fit neatly into the obligations of IFIs. With this in mind, I distinguished several obligations most necessary to protect people from these powerful organisations and ‘customise’ them for the purpose of

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governing the activities of IFIs. Even if the full range of responsibilities are not yet accepted in international human rights law, there is a compelling reason for arguing that IFIs ought to bear these responsibilities, and that designing obligations to “fit” is therefore important for the future development of international human rights law.

Later in the book I will argue that the IFIs should not only have a human rights responsibility in choosing projects, but should also adhere to human rights standards in the delivery of their projects, notably in their assessment of the impact of projects on local populations and on the evaluation and inspection of their operations.

As already noted, some work has been done regarding the inadequacy of international human rights mechanisms and non-State actors. This book builds upon these arguments and insights. In my opinion, IFIs have human rights obligations, although legal analysis of this issue is not the main purpose of this research. This book goes further and aims to assess these organisations’ policies through the prism of international human rights standards and to suggest how these policies could and should be improved.

Although there are many human rights issues regarding these Banks, an attempt to deal with all of them in one book is unrealistic. Therefore, I have chosen to focus on three human rights: the right to access information, the right to participation and the right to access to justice (especially the right to a fair trial, which is a form of accountability). By observing these Banks’ activities, one realises that the Banks’ lack of the guarantee of transparency, participation and accountability often has serious negative influences on people’s lives. Therefore, ensuring that these rights are protected provides a foundation for the guarantee of other rights.

In the area of international environment, in Principle 10 of the Rio Declaration on Environment and Development (1992), these three elements (transparency, participation and accountability) are emerging as critical principles in the context of sustainable development. The World Bank and ADB have also been paying attention to aspects of these rights. The World Bank officially states, “… we have been supporting some key

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61 UN Doc. A/Conf.151/26. See Section 2.1, Chapter 2 of this book.
principles which underlie human rights, namely transparency, accountability, participation …”.

The ADB also declared that it will bring these elements “deeper into the mainstream of its operations and activities.”

Access to information is a fundamental human right and “the touchstone of all the freedoms to which the UN is consecrated”, as the UN General Assembly declared in its first session. This human right is a prerequisite for the guarantee of other rights in IFIs’ operations. Recently, the World Bank and ADB have revised and improved their information disclosure policy (in December 2009 and November 2011 respectively).

Participation is closely linked to access to information. The significance of participation in the development process as a human right has been stressed in the UN human rights arena. A participatory approach to development has also been emphasised by both Banks.

As a response to serious criticism of its projects, the World Bank established the Inspection Panel in 1993 through which affected people can appeal the Bank’s projects. ADB followed suit in 1995 and have already revised the mechanism twice: the latest revised policy was adopted in February 2012. These appeal mechanisms are one of the instruments for improving their accountability, and this book assesses them through the prism of human rights. As will be seen later, these are not judicial bodies, but are quasi-judicial or administrative mechanisms. Since the purpose of this book is to assess the policies of these institutions through the prism of human rights standards for their further improvement, applying the right to access to justice, which encompasses the right to a fair trial and the right to an effective remedy, serves as an appropriate benchmark with established compelling rationale and recognised key elements. While this may be considered a high standard, this seems appropriate given the power and importance of the Banks.

In order to assess both Banks’ policies related to these human rights, first, I aim to set out the international human rights standards of these rights on the basis of scholars’ work, case law and studies by the UN and

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64 ADB (n 7) para. 32.
66 For example, see UN Declaration on the Right to Development (GA resolution, 41/128).
NGOs. After considering these policies, in the final chapter, the implementation of these rights will be examined through controversial projects of both Banks, and I will suggest how human rights standards could have been applied. By this exercise I would like to demonstrate a practical approach to implementing human rights standards in the development field.

I emphasise that the human rights community must develop specific human rights standards with regard to development because, in spite of the emphasis on human rights approaches to development, the human rights community has not made much progress moving the discussion “from abstract to specific.” Hunt rightly observes that since the arguments in favour of human rights have been stronger on slogans than practical measures, “The human rights community has to shoulder some of the responsibility for the failure of development practitioners to consistently use human rights.” The former Special Representative of the World Bank to the UN also mentioned that although he understands the importance of principles of human rights, it is a task of the human rights community to explain how to implement and apply them to the IFIs’ operations. This book seeks to respond to this challenge.

I also stress that the human rights community, whose work in this area has been limited to the World Bank and the IMF, should widen its scope to include regional IFIs as well. The regional IFIs have mandates similar to the World Bank and cause similar human rights problems, as will be seen in the ADB case study later in this book. However, very little human rights attention has been paid to ADB or other regional IFIs. Generally, as Clark says about the World Bank, “On paper, the Bank’s policies are

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67 As for case law, regional human rights jurisprudence, especially the European Court of Human Rights, will be cited. European human rights jurisprudence is compelling, persuasive and influential beyond Europe. Since the purpose of this book is to assess policies of the World Bank and ADB through international human rights standards, it is relevant to cite European human rights jurisprudence.

68 Robinson mentions that one of the criticisms of human rights by those who work in the development field is that human rights are abstract and cannot be applied practically. M. Robinson, “What Rights Can Add to Good Development Practice” in Robinson and Alston (n 10) 25–41 at 34, 35.


70 Interview with a Special Representative of the World Bank to the UN and World Trade Organization in Geneva (14 August 2002 Geneva).
considered to be among the most comprehensive in the world".\footnote{D. Clark, “Boundaries in the Field of Human Rights: The World Bank and Human Rights: The Need for Greater Accountability” (2002) 15 Harvard Human Rights Journal 205, 205. She continues, however, “there is a gap between the rhetoric and the implementation of the policy framework.”}{71} However, as will be seen later, ADB’s revision of policies on accountability (2003) and information disclosure (2005) made them more advanced than those of the World Bank at that time. As some staff members of ADB say, these Multilateral Development Banks (MDBs)\footnote{See footnote 1.}{72} are sensitive to what other MDBs are doing, and it is easier to persuade ADB management, or other staff, to accept a higher standard of policies if the World Bank or other MDBs are doing better.\footnote{Personal Communication with some ADB member staff (14 June 2004, London).}{73} I hope this book will contribute to stimulating such constructive competition among MDBs.

In Chapter 1, the relationship of both the World Bank and ADB to human rights will be examined. Here, special attention will be paid to the Banks’ attitudes towards human rights. In Chapter 2, both the Banks’ information disclosure policies will be analysed through the prism of human rights. Similarly, Chapters 3 and 4 will analyse both the Banks’ participation policies and inspection mechanisms, respectively through international human rights standards. Finally, in Chapter 5, the World Bank’s China Western Poverty Reduction Project (CWPRP) and ADB’s Samut Prakarn Wastewater Management Project will be examined based on the human rights standards of the right to access information, the right to participation and the right to access to justice. The CWPRP and Samut Prakarn were among the most controversial projects and as a result had a significant impact on the Banks.