

1 of 1 DOCUMENT

Policy Papers

January, 2002

The role of international financial institutions in international humanitarian law: Report
from the International Humanitarian Law Working Group

AUTHOR: By Laurie R. Blank

ISSUED-BY: U.S. Institute of Peace

LENGTH: 16542 words

One. Introduction

In recent years, many international financial institutions (IFIs) have moved beyond narrow economic benchmarks to begin considering a broader array of social factors in their programs and decisions. The World Bank, for example, includes environmental concerns, human rights issues, gender issues, governance, legal and judicial reform, and public participation in its consideration of potential and existing projects and assistance programs. Other institutions, including the International Monetary Fund (IMF), the European Bank for Reconstruction and Development (EBRD), and the Inter-American Development Bank (IDB), also factor human rights, environmental, and other concerns into their analyses.

As the overlap between countries mired in interstate or internal conflict and the countries comprising the client base of these international financial institutions continues to grow, the institutions will encounter the challenges of addressing massive violations of international humanitarian law by governments and other actors in client states more frequently. (Note 1) For the purposes of this report, international humanitarian law includes the basic norms and principles prohibiting genocide, crimes against humanity, war crimes, and other violations of the laws of war as set forth in the 1949 Geneva Conventions, the Genocide Convention, and other relevant treaties, conventions, and international and national judicial decisions.

For example, when considering a prospective or ongoing program in a country where the government, other actors, or both are committing war crimes, crimes against humanity, or genocide, how should an international financial institution react? International economic policy is a powerful tool, and many argue that, given the power and influence of international financial institutions, it can be an appropriate tool for promoting adherence to international humanitarian law. Whether through action or inaction, international financial institutions arguably will play some role in the implementation of international humanitarian law--just as policies designed to address international humanitarian law violations send a message to governments committing or supporting those engaged in atrocities, so the implementation of projects and loans without any consideration of ongoing violations communicates a message of acceptance. The question, therefore, is what form that role can and should take.

The Structure and Function of IFIs

Many of the arguments both in favor of and against IFIs incorporating international humanitarian law concerns into their decision-making process stem from the role that these institutions play and are designed to play in the international

community. A brief look at the basic structure and mandate of the relevant financial institutions will offer guidance for the discussion of this issue.

The World Bank

The World Bank Group includes four financial institutions and one center for dispute resolution: the International Bank for Reconstruction and Development (IBRD), the International Development Association (IDA), the International Finance Corporation (IFC), the Multilateral Investment Guarantee Agency (MIGA), and the International Center for the Settlement of Investment Disputes (ICSID). (Note 2) The Bank's activities in its member states include financial operations, such as lending money; dialogues about policies that may affect economic development and projects the Bank is financing; technical assistance, including training; and the provision of theoretical and practical information about development activities. The Bank's Articles of Agreement set forth its basic purposes, which are to assist in the economic reconstruction and development of member states, promote balanced growth in international trade and the maintenance of equilibrium in balance of payments, increase productivity, and raise the standards of living in less-developed areas of the world.

Regional Development Banks

Like the World Bank, the African, Asian, and Inter-American Development Banks provide financing to qualifying member states and promote economic development. The EBRD, which was created in the aftermath of the Cold War to address the reconstruction of the former communist states of central and eastern Europe, and now the independent states of the former Soviet Union as well, has both a development and a reconstruction mandate. Article 1 of the agreement establishing the EBRD states that its primary purpose is "to foster the transition toward open market-oriented economies and to promote private and entrepreneurial initiative in the central and eastern European countries committed to and applying the principles of multiparty democracy, pluralism, and market economics." (Note 3)

The International Monetary Fund

The IMF is a monetary institution, rather than a development institution like the banks described above, and its primary purposes are to promote monetary cooperation, assist in the establishment of a multilateral system of payments for transactions, promote orderly and stable exchange rates, and help correct balance-of-payments problems. To do so, the IMF engages in three primary activities: surveillance, which includes regular consultations with member states to monitor exchange rate and balance-of-payments policies and provide macroeconomic and monetary advice; the provision of financing to member states to counteract balance-of-payments problems; and technical training and support assistance. In recent years, the IMF has begun to service only developing nations rather than all of its member states, becoming less a monetary institution and more a development financing institution. As a result, its focus, once solely macroeconomic, now includes governance; labor market issues; law reform; budgetary allocations, including military expenditures; and monitoring compliance with standards and codes for banking, accounting, auditing, corporate governance, and related issues.

Current Practice of IFIs in Conflict Situations

The World Bank is the most active of the IFIs in conflict situations, primarily because many of the countries in which it operates have experienced violent conflict either within or just beyond their borders in the past few decades. In response to this development, the Bank created a Post-Conflict Unit in 1994 (recently renamed the Conflict Prevention and Reconstruction Team) to coordinate its operations in countries recovering from conflict and to help the Bank learn more about the problems of dealing with countries in conflict. Operations in conflict or postconflict regions present the Bank with new challenges, such as the complex military and economic issues of demobilization, demining, and establishing governance structures. Under the terms of its new Operational Policy (OP) 2.30, the Bank approaches conflict in three stages: in countries vulnerable to conflict, the Bank seeks to promote economic growth and poverty reduction through

its usual instruments of development assistance; in countries in conflict, the Bank also analyzes[] the impact of conflict on economic and social development" and prepares for the provision of assistance when appropriate; and in countries in transition from conflict, the Bank supports economic recovery and sustainable development with "particular attention to the needs of war-affected groups." (Note 4)

When conflict renders continued assistance impossible, the Bank may initiate a "watching brief" in order to gather information about and develop an understanding of the conflict, the major players, possible partners for postconflict reconstruction, adverse economic and environmental consequences, and relief options. For countries in transition from conflict, the Bank may reinstate the Country Assistance Strategy or prepare a Transitional Support Strategy, which is an intermediate-term plan for Bank involvement once the conflict has diminished enough to proceed with development activities. (Note 5) Throughout this process, the Bank must operate within its mandate, funding economic reconstruction and related activities but refraining from direct participation in peacekeeping or peacemaking efforts.

The IMF's involvement in conflict situations is primarily limited to assisting countries in rebuilding administrative and institutional capacities necessary for the establishment of an economic framework. To facilitate its involvement in postconflict regions, the IMF created a Post-Conflict Emergency Assistance Program in October 1995 that is designed to restore macroeconomic stability to a nation and catalyze balance-of-payments support from the international community. Countries are eligible for the program once they meet four criteria: (1) an urgent balance-of-payments crisis exists; (2) there is a highly disrupted "institutional and administrative capacity"; (3) the country's authorities make a commitment of cooperation; and (4) a concerted international reconstruction effort is already under way. In the past six years, the IMF has introduced the Post-Conflict Emergency Assistance Program in Bosnia and Herzegovina, Rwanda, Albania, Tajikistan, the Republic of the Congo, and Sierra Leone. (Note 6)

In general, the regional banks have become involved in conflict and postconflict situations in response to conflicts in or between countries in their regions. Of the four, the EBRD has become immersed in postconflict reconstruction most frequently and most intensively, particularly in the Balkans, where it established a Balkan Regional Action Plan (now the South Eastern European Action Plan). Unlike the other IFIs, the EBRD was created to promote the values of multiparty democracy, pluralism, market economics, human rights, and the rule of law, (Note 7) and a specific political mandate in Article 1 of its Agreement directs the EBRD to invest only in countries making progress toward implementing principles of multiparty democracy, pluralism, and market economics. (Note 8) In general, the EBRD interprets the political aspects of its mandate narrowly, often maintaining operations in countries in which the nature of the political system or the quality of the democratic government does not necessarily meet the standards set forth in Article 1. However, it does work closely with other specialized international and regional organizations and will alter its lending and financing operations in response to gross violations of its fundamental principles.

The EBRD has two primary means of responding to states that fail to meet its standards. First, it can prevent a country from becoming a member and having access to funding if that country is not adhering to, or making significant progress in adhering to, the principles of Article 1. For example, the newly independent countries of the former Socialist Federal Republic of Yugoslavia were required to endorse the values in Article 1 specifically as a condition of membership. Similarly, the EBRD prevented the Federal Republic of Yugoslavia from applying for membership until January 19, 2001, because the nature of the conflicts in which the country was involved prevented adherence to and compliance with those principles. Second, the EBRD can suspend a member state's access to funding if it stops proceeding toward the fulfillment of the EBRD's stated values. In Turkmenistan, for example, the EBRD has suspended public sector funding in response to the Soviet successor state's return to a command economy; yet it continues to provide financing to the country's private sector to protect against this trend.

Two. A Role for International Financial Institutions?

The daily and postconflict operations of the World Bank, the IMF, and the regional development banks suggest that there can be a role for IFIs in the implementation and enforcement of international humanitarian law. These

The role of international financial institutions in international humanitarian law: Report from the International Humanitarian Law Working Group Policy Papers January, 2002

organizations frequently make economic and financial aid conditional on economic reforms, fiscal policy, or monetary policy, demonstrating their ability to exert significant influence on their client states and promote specific designated goals of economic stability and financial independence. They also evaluate economic conditions in the relevant countries, as well as the factors that could influence those conditions and the success of projects and financing. Both of these activities position IFIs not only to make a positive contribution to international humanitarian law but also to incorporate such principles into their policymaking processes and thus benefit their operations and effectiveness.

As the nature of conflict has become primarily intrastate and significantly more damaging to civilians in the past decade, it has become apparent that the international response to countries in conflict is incomplete. Many participants at the IHL Working Group meeting suggested that IFIs can help to fill this gap by responding in ways that support the efforts of the international community to prevent and end conflict or address its aftereffects. With their abundant financial power, IFIs exert substantial influence on the policymaking process in states receiving financing and project funding. The World Bank, for example, is the single largest creditor to the more than one hundred developing countries. In Fiscal Year 2001 alone, the World Bank extended capital commitments totaling \$17.3 billion, primarily to developing states, in many cases to states that have been the venues for atrocities and abuses committed by either the government or other groups. (Note 9) Although IFIs have traditionally sought to be engaged with governments in policymaking on development issues, they have become much more policy-oriented in recent years--to the point that they are now usually key players in the policymaking process in countries dependent on them for loans and project financing. IFIs exert their influence through loans, macroeconomic assistance, project financing, policy dialogues, technical assistance, and research programs.

Concern about expansion of mandates and dilution of responsibilities leads many IFI executives and staff to resist calls for a role in international humanitarian law. Yet the large number of client states that are mired in conflict leaves IFIs virtually no choice but to be involved in some way in conflict situations, if only to carry out their lending and assistance programs more effectively. The World Bank, for example, is now committed to analyzing the causes and effects of conflict, as set forth in OP 2.30. Many of today's conflicts are marked by massive violations of international humanitarian law and human rights law, and their correspondingly devastating effect on civilians and prospects for economic growth demands greater international attention. The February meeting of the IHL Working Group addressed whether IFIs can be appropriate agents for promoting adherence to and enforcement of international humanitarian law and whether they are equipped to do so. Many argue that structural and political concerns pose obstacles to the development of a role for IFIs in international humanitarian law.

In contrast, others suggest that the effective implementation of their own mandates actually obliges IFIs to factor humanitarian law violations into their decision-making processes and, in such a way, enables them to make some contribution to the implementation and enforcement of international humanitarian law.

Any policy an IFI enacts in countries marked by conflict and atrocities will send a message about the institution's level of tolerance for or abhorrence of humanitarian law violations. Several participants suggested that disengagement in response to atrocities would undermine an IFI's position as an impartial adviser. Being seen as an interested participant in a client state's affairs could politicize an IFI, damaging its relationship with the client state. Such states might then be less willing to work with the IFI in other economic areas, thus harming the IFI's ability to fulfill its mandate. Furthermore, in some situations, financial assistance and project development can have a positive impact even in the face of atrocities and human rights abuses by alleviating suffering through an improved standard of living, facilitating an end to the economic causes of conflict, or enabling the development of mechanisms to address past abuses by freeing up assets otherwise used for other needs.

Others, however, argue that proceeding with loans and projects without considering past or ongoing atrocities committed with impunity is not a neutral stance, because the IFIs' influence makes the very act of engagement, even if on the basis of economic considerations alone, just as symbolic as that of disengagement. A government engaged in or facilitating atrocities will have less incentive to adhere to international legal norms if it continues to receive funds from

the World Bank, the IMF, or a regional bank without any consideration of the atrocities or the impunity of those responsible. Hortatory and diplomatic pressure will lose its muscle when matched with "reverse" economic incentives. The issue is not whether IFIs should take sides in conflicts or help one side to defeat the other, nor is it whether IFIs should automatically cease all activities in a country at the first sign of humanitarian law violations. The power of the purse often gives IFIs one of the loudest voices, one that can be used to complement efforts by the United Nations, interested states, and nongovernmental organizations (NGOs) to protect civilians and prevent violations of international humanitarian law. Factoring considerations of international humanitarian law into the decision-making process may thus offer IFIs an opportunity to help prevent or address the type and scale of atrocities that the world has seen far too often in recent years. The key question, according to the consensus of participants at the IHL Working Group meeting, is how IFIs can incorporate such considerations in ways that do not undermine their core mandates.

Improved Implementation and Enforcement of International Humanitarian Law and Support for the United Nations and the International Community

If IFIs were to factor international humanitarian law into their decision-making processes, the incentives for compliance and penalties for noncompliance with international humanitarian law would likely increase. States that depend on financial assistance from one or more IFIs will recognize that their humanitarian law record affects their ability to obtain such assistance and may respond by tailoring their behavior to meet the necessary obligations under international law. In contrast, granting financial support to countries that commit atrocities, allow atrocities to be committed by paramilitary forces and rebel groups, or disregard the legal orders of international criminal tribunals will give such countries little incentive to uphold their international legal obligations--and actually may embolden them to continue such practices.

IFI involvement in international humanitarian law can also support efforts by the United Nations and the international community to prevent and limit violations of international humanitarian law and enforce the law against those suspected of committing atrocities. For example, pressure from the international donor community on Serbia was a critical factor in the extradition of former Yugoslav president Slobodan Milosevic to the International Criminal Tribunal for Yugoslavia (ICTY) in The Hague. International donors, including international financial institutions, used their financial influence to induce Yugoslavia to comply with obligations already established under international law. (Note 10) Although the World Bank and the IMF are specialized agencies of the United Nations and function as independent international organizations not bound by most UN decisions, they are bound by UN Security Council resolutions taken under Chapter VII of the UN Charter. (Note 11) Thus, when the Security Council imposes sanctions, establishes a tribunal, or takes other action under Chapter VII, the World Bank, the IMF, and other institutions are obligated to "have due regard" for those decisions. (Note 12) For this reason, former World Bank general counsel Ibrahim Shihata explained that the Bank would not "lend to a member country which is subject to embargo measures imposed by the Security Council" regardless of economic or financial considerations. (Note 13)

Similarly, IFIs need to tailor their operations in countries that are the subject of Chapter VII resolutions to ensure that they do not contravene the binding decisions and actions of the United Nations. The decision to withhold aid from Yugoslavia until a measure of cooperation with the ICTY was established is one example. In some cases, the obligation to abide by Security Council decisions could require that an IFI suspend lending or curtail operations in a country that is harboring suspected war criminals indicted by a tribunal established under Chapter VII. IFIs that lend to the private sector could face the need to determine whether such a tribunal had indicted any of the managers or shareholders in private enterprises receiving assistance. A more difficult question may arise when the Security Council, acting under Chapter VII, has declared that violations of international humanitarian law in a particular country are a threat to international peace and security but has not yet taken any further action.

Some argue that by virtue of being specialized agencies of the United Nations, the IMF and the World Bank "should recognize and make every effort to uphold UN standards and goals." (Note 14) Indeed, each IFI comprises states that are also members of the United Nations and, under Article 103 of the UN Charter, have obligations under the Charter

The role of international financial institutions in international humanitarian law: Report from the International Humanitarian Law Working Group Policy Papers January, 2002

that prevail over all other treaty obligations, including those stemming from their membership in international financial institutions. Article 48(2) of the Charter also requires member states to carry out Security Council decisions "directly and through their action in the appropriate international agencies of which they are members," an obligation explicitly recognized in the 1947 agreement between the United Nations and the World Bank (Note 15) IFIs therefore need to confront what they can do as institutions in light of their member states' legal obligations under the UN Charter. In developing proposals for lending and projects, IFI staff should consider how the proposed operations might affect their member states' ability to fulfill their obligations as members of the United Nations.

In making decisions and voting on such proposed operations, IFI directors similarly must consider the obligations of the states they represent to ensure that all member states are able to carry out their obligations not only as members of the IFI but also under Articles 48(2) and 103 of the UN Charter. IFIs thus cannot facilitate a state's ability to take action indirectly that it could not take directly--a state bound to implement and enforce UN sanctions against another state, for example, cannot vote to approve IFI lending to the target state. As a result, many urge that IFIs should act so as to avoid undermining efforts by the United Nations, member states, and multilateral and nongovernmental organizations to implement and enforce international humanitarian law--efforts ranging from diplomacy to advocacy campaigns to assistance with the establishment of trials and truth commissions. Providing financing to a government that is suspected of involvement or complicity in atrocities can compromise international efforts to halt the atrocities and bring the perpetrators to justice by reducing the pressure the international community can exert on that government

Although recognizing the benefits of IFIs supporting United Nations efforts to prevent, limit, and redress atrocities, some participants at the IHL Working Group's February session argued that it is inappropriate for an institution with no direct accountability to the people affected by its programs to advance objectives beyond the strictly economic goals of its projects. Each IFI has a board of directors that must approve all financing operations and is responsible for most operational policies and the daily functioning of the institutions. The IMF and World Bank boards have significantly fewer directors than the number of member states, with each Group of Seven (G-7) country and China having its own director and each of the remaining directors representing a group of member states. This structure leads many to argue that the G-7 countries can exert substantial control over the IFIs' operations and decisions while, at the same time, not using the financial or advisory services of the institutions they control. Some scholars contend that this exercise of power without accountability or responsibility creates governance problems, exacerbated by the influential voice IFIs have in the policymaking process in client states most directly affected by the IFIs' policies. In addition, because the IFIs' financial power gives them greater influence than other specialized agencies, playing a role in international humanitarian law could enable IFIs to exercise disproportionate control over the issue. A further concern often raised is that taking international humanitarian law into consideration will politicize the IFIs and open them to charges of bias and subjectivity, undermining their role as outside experts who give impartial and disinterested advice and resources. Dialogues with borrowing governments may lose their effectiveness if those governments begin to doubt the IFIs' objectivity and view the imposition of conditions or requirements as a mere reflection of particular political interests.

Other observers suggest that IFI involvement in international humanitarian law will have an inconsistent impact on member states. IFI efforts to contribute to the implementation and enforcement of international humanitarian law will affect only those states seeking financing and other assistance from the IFIs. Poorer countries, which have bleak economic prospects without assistance from the World Bank, the IMF, and other institutions, will face new requirements and obligations in order to receive the type and level of assistance necessary to promote development and reconstruction, as well as to maintain economic stability. Countries that have economies strong enough to manage without IFI assistance, and are therefore not subject to their influence, will be able to ignore these same requirements and obligations. This situation could cause some resentment among poorer client states of IFIs, whose governments could argue that these financial institutions' heightened attention to international humanitarian law violations in their countries amounts to a double standard if the same attention is not directed to richer states as well.

However, all states are obligated to respect the basic principles of international humanitarian law, regardless of whether other states do so. IFI decisions will necessarily be limited to those states seeking assistance. If their consideration of

international humanitarian law has an inconsistent impact on member states, this is no different from the common practice of imposing environmental regulations and other conditions on such offers of financial assistance--the adherence to international humanitarian law by wealthier states will need to be facilitated through organizations other than IFIs. If, by considering international humanitarian law concerns in the decision-making process, IFIs can help promote adherence to, or prevent violations of, international humanitarian law in even one state, many argue that IFIs will be fulfilling an appropriate and vital role.

Fulfillment of Mandates

Each IFI has a specific economic and development mandate, as detailed above. With the exception of the EBRD Agreement, the IFIs' various articles of agreement also limit the factors that each institution can take into account in reaching decisions about loans and projects, stipulating that politics and political factors should not influence any decisions. (This discussion of the limitations in the IFIs' mandates will therefore not pertain to the EBRD.) For example, Article IV, Section 10 of the World Bank's Articles of Agreement states that "the Bank and its officers shall not interfere in the political affairs of any member; nor shall they be influenced in their decisions by the political character of the member or members concerned. Only economic considerations shall be relevant to their decisions, and these considerations shall be weighed impartially in order to achieve" the basic purposes of the Bank. (Note 16) The IMF's articles mandate that the fund must "respect the domestic social and political policies of members, and in applying these principles ... pay due regard to the circumstances of members." (Note 17) Although this provision does not place any explicit prohibition on consideration of "political" issues, the IMF has interpreted it that way. Many argue that these provisions require these IFIs to disregard any factors that are not directly relevant to the economic terms and results of a particular loan or project, especially since the IFIs often do not have the staff expertise or the resources to incorporate so-called noneconomic considerations into the decision-making process.

Although the IFIs cannot interfere in or be influenced by the political character of domestic politics of any member state, there is general agreement that certain political factors and events can have "significant direct economic effects which, due to their economic nature, may properly be taken into consideration in the Bank's decisions." (Note 18) Political events can also produce obligations for the Bank and its member states that must be respected, such as binding obligations under UN Security Council decisions. (Note 19) Atrocities committed against civilian populations during conflict often disrupt the regular functioning of the economy and divert resources away from business, commerce, and government infrastructure to pay for military operations.

Once the conflict has ended and the reconstruction efforts have begun, violations of humanitarian law may continue to complicate and hinder the reconstruction and development of the economy because of population displacements; refugee flows; increased ethnic, religious, or other tensions; and the loss of skilled and educated people who were either killed or fled the atrocities. The frequent close link between the nonapprehension of war criminals and the postconflict spread of economic corruption and entrenchment of organized crime renders the failure to apprehend war criminals an ill-ignored factor in economic reconstruction. Atrocities that hinder and often reverse the effects of development--thus posing obstacles to reconstruction--threaten the very mandate the Bank seeks to fulfill. (Note 20) Former World Bank general counsel Ibrahim Shihata recognized that "if the political situation in a country is so repugnant to internationally acceptable behavior or if the violation of political rights in such country is so pervasive, there will inevitably be economic repercussions to these political events which the Bank may have no choice but to take into account as relevant economic considerations." (Note 21) As nearly every country in the world and likely every member of the IFIs is a party to the 1949 Geneva Conventions, violations of international humanitarian law can be considered repugnant to internationally acceptable behavior and are therefore of legitimate economic concern to IFIs.

Some IFI staff and commentators argue that the "political prohibition" in the Bank's mandate requires it to refuse to consider atrocities, other violations of international humanitarian law, and indications of possible future atrocities that occur within a client state because such considerations are matters of national security that fall within the meaning of political affairs. Although decisions about whether to develop certain new weapons may be questions of national

security, willful violations and passive acceptance of violations of fundamental international legal norms and obligations do not fall within the realm of domestic national security or political issues. The choice of how to respond to violations of international humanitarian law--whether through a tribunal, truth commission, or other mechanism--may be left appropriately to the domestic governmental process in some cases, but the obligation to prevent, limit, and respond to such atrocities in some way is stipulated under international law and does not fall within the realm of domestic political affairs. It is now well established that certain fundamental human rights and international norms lie beyond a state's domestic jurisdiction and represent obligations that a state owes to the international community. (Note 22)

Thus many scholars and international lawyers, including former World Bank general counsel Shihata, contend that the prohibition against considering political factors in the Bank's mandate does not include "the international conduct of a state affecting its fundamental obligations under the UN Charter" but, rather, concerns only "interference in the internal political affairs of the Bank members and discrimination against a member because of the political character of its government." (Note 23) It is settled as a matter of international law that, while many variations in national policy and domestic affairs are legitimate, violations of international humanitarian law and human rights, even when perpetrated internally, are not legitimate choices for a government and represent violations of that government's obligations under the UN Charter and various other international agreements.

Apart from questions of whether IFIs can consider international humanitarian law issues, some participants at the IHL Working Group meeting suggested that in certain circumstances, IFIs will need to consider such issues in order to fulfill their mandates properly. Widespread violations of rights under humanitarian law can offer insight into how a government will treat other international obligations, such as loan agreements with the World Bank or the IMF. For its own purposes in assessing a state's creditworthiness and risk level and deciding whether to initiate or continue operations, an IFI should at least view the existence of atrocities or the failure to combat impunity as important considerations in developing and pursuing loans and projects. The World Bank has recognized that "[k]nowledge of the political situation may... be necessary in the assessment of the country's creditworthiness and of the ability of a certain government to carry out its obligations under a specific loan or of the Bank's ability to supervise the project" it is financing. (Note 24) Article III, Section 4(v) of the Bank's Articles of Agreement instructs the Bank "to pay due regard to prospects that the borrower... will be in a position to meet its obligations under the loan." Any factor that affects a state's ability to satisfy its obligations to the Bank thus can be relevant for the Bank to consider, including the impact of international humanitarian law violations on a state's actual ability to meet its obligations and the likelihood that a state in violation of one set of international legal obligations may ignore another obligation.

A variety of studies and past experiences demonstrate that human rights violations and, by extension, the commission of massive atrocities during conflict can affect a country's economic growth, the financial success of development programs, and the state's ability to service its debts. (Note 25) Atrocities can also hinder IFIs' ability to supervise and manage their projects and investments, which is an important factor for such institutions to incorporate in their analyses. The Bank's OP 2.30 highlights the impacts that conflict can have on the Bank's operations and ability to fulfill its mandate, explaining that conflict "results in loss of life and destruction of assets, contributes to social and economic disintegration, and reverses the gains of development, thereby adversely affecting the Bank's core mission of poverty reduction." (Note 26) It adds that "conflict not only affects the country or countries of the combatants, but also may spill over to other countries and have regional implications." (Note 27) If violations of international humanitarian law are indicators of a state's future economic prospects or undermine efforts to promote development and economic cooperation, information about such violations will help IFIs ensure that they can fulfill their mandates.

Factoring such information into the decision-making process can be difficult, particularly in cases where the connection between the atrocities and economic performance may appear tenuous. While massive violations of international humanitarian law that occur in a small country or throughout a country will likely affect the country's economy adversely, the connection between atrocities and economic development may be harder to discern in a larger country with conflict raging in only one small region. For example, although Russia faces economic difficulties and receives

assistance from various IFIs, it is not clear how the ongoing conflict and violations of international humanitarian law in Chechnya affect Russia's economy as a whole. Assessing whether atrocities have such an impact as to threaten sustainable development proves significantly more challenging in this scenario than in others. IFIs may not always be able to reach conclusions about how to respond to information about atrocities, but the information remains relevant to the fulfillment of their mandates. Like any economic or financial institution, an IFI needs to have full and accurate information about the likelihood of success and repayment in order to fulfill its mandate appropriately and be accountable to its other member states.

A role for IFIs in the implementation and enforcement of international humanitarian law does not mean that they must always withdraw or reduce funding; rather, it suggests that IFIs consider the impact of international humanitarian law violations as a factor in making policy and decisions. Information about atrocities and the international community's efforts to prevent and limit them can become integral factors in the decision-making process of each financial institution operating in countries that could potentially become embroiled in conflict, are actively engaged in conflict, or are rebuilding after the end of conflict. Thus some participants at the IHL Working Group meeting urged that IFIs consider what they can do by way of development and economic assistance that underpins the efforts of the international community. Doing so requires IFIs to understand and take into account the international humanitarian law issues and concerns in relevant countries so as to play a role that fulfills their institutional mandates and goals while assisting the international community, when possible and appropriate, to ensure respect for international law.

Three. How IFIs Can Contribute to International Humanitarian Law

Within the strictures created by the IFIs' legal mandates, specialized staff and resources, and political considerations, there can be an important role for IFIs in bolstering the international community's efforts to ensure greater respect for the basic principles of international humanitarian law and bring perpetrators of atrocities to justice. IFIs are not designed for conflict prevention, peacekeeping, or conflict resolution. Yet many of the IHL Working Group's participants suggested that IFIs, as specialized economic institutions that are subjects of international law and important players in the international community and in conflict areas, should examine their capacities to see how they can support the efforts of the international community to prevent, limit, and address atrocities and protect the rights of combatants and noncombatants alike. Policies should be devised and decisions taken with an eye to the international community's efforts and to how they can support and, above all, avoid undermining those efforts. Existing practice suggests several potential opportunities for IFIs to make a contribution in this arena, including collecting and sharing information with other international and multilateral organizations, supporting UN Security Council decisions and operations taken under Chapter VII, adopting formal conditionality policies, and applying informal conditionality in the course of daily operations. Indeed, the following discussion of possible ways for IFIs to play a role in international humanitarian law demonstrates that these institutions already do incorporate these concerns into their analyses, at least on an occasional basis, and can therefore do so within their existing analytical frameworks.

Information Gathering and Sharing

As noted previously, IFIs are present in some capacity in most states that are at risk of conflict, engaged in conflict, or recovering from conflict. Their proximity to and intimate involvement in events makes information about the situation in a conflict region critical to their operations. By liaising with representatives from other international organizations, notably those specializing in international law, human rights, humanitarian relief, and peace operations, IFIs can acquire information about international humanitarian law issues that will inform their decision-making process.

For example, when humanitarian relief workers have been targeted in a certain area or by a certain group, IFIs will most likely want to take measures to protect their own personnel. Coordination and exchange of briefings with organizations such as, for example, the International Committee of the Red Cross (ICRC) and the United Nations High Commissioner for Refugees (UNHCR) regarding developments in conflict regions, violations of international humanitarian and human rights law, and population and refugee flows could prove useful for IFIs in determining future steps. These

consultations and informal means of cooperation are particularly relevant during the World Bank's "watching brief" and when an IFI is trying to determine if it can reinstate operations in the aftermath of conflict. The Bank's recently issued OP 2.30 declares that the purpose of the watching brief is "to develop an understanding of the context, dynamics, needs, and institutions of the area to position the Bank to support an appropriate investment portfolio when conditions permit." (Note 28) In order to engage in a country emerging from conflict, the Bank must first be able to determine that active conflict has subsided to the point where personnel can travel to and throughout the region and can "prepare and carry out any such activities effectively and achieve their objectives." (Note 29) Other IFIs face the same considerations when contemplating a return to operations in a country emerging from conflict.

Beyond safety concerns, information about violations of international humanitarian law and the resulting effects on the country's political and economic infrastructure may be relevant to the development of projects. In the absence of an authoritative legal determination from the UN Security Council that would be binding on both IFIs and their member states, gathering and weighing information from the United Nations, other specialized international organizations, NGOs, and member states can help IFIs determine appropriate courses of action. As specialized economic organizations, IFIs do not generally have the capability to make determinations about violations of international humanitarian law. Other organizations, such as relevant UN bodies, the ICRC, and various NGOs, do have expertise in international humanitarian law and can provide such determinations, which can then serve as the basis for IFI considerations and decision making. For example, how should a regional development bank or other IFI respond when credible organizations report that a client state is engaged in carrying out massive human rights abuses rising to the level of crimes against humanity? The UN Security Council may not yet be "seized of the matter"--that is, actively engaged--but because violations of international humanitarian law could indicate an increased probability of economic instability in the offing in some countries, (Note 30) getting such information directly from others on the ground and at an early stage will help decision makers at IFIs to respond in a timely and effective manner.

With all relevant information at hand, IFIs have an opportunity to assess whether and how they can fulfill their objectives in a way that supports what the international community is trying to accomplish. The Bank's approach to development and conflict outlined in OP 2.30 suggests that including this type of information in both documents and discussions about policy decisions is an integral part of operating in a conflict region. In countries vulnerable to conflict, the Bank is to "promote economic growth and poverty reduction through development assistance that minimizes potential causes of conflict." (Note 31) In countries in conflict, one of the Bank's objectives is to "analyze the impact of conflict on economic and social development [and] prepare for Bank assistance as opportunities arise." (Note 32) Finally, in countries making the transition from conflict, the Bank is tasked with supporting economic recovery and development "with particular attention to the needs of war-affected groups who are especially vulnerable by reasons of gender, age, or disability." (Note 33) Detailed information on atrocities and other international humanitarian law-related issues can help the Bank fulfill these objectives properly. An IFI's lower profile or lack of involvement altogether during times of conflict can pose significant obstacles to gathering and sharing information. Routinely collecting information, including humanitarian law concerns, from relevant outside agencies and organizations can help fill the gaps in an IFI's knowledge base.

IFIs can also play a role in *providing* useful information to other specialized international organizations about developments in countries vulnerable to conflict, in conflict, or emerging from conflict. Although gathering information and reporting on international humanitarian law violations is not a primary function of any IFI, in-country staff often glean information about abuses that would prove useful to the work of organizations whose mandates cover those areas. Some IFIs may be reluctant to share such information with other organizations because of security or confidentiality concerns. In circumstances in which the exchange of information about international humanitarian law issues is feasible, an IFI could develop procedures to guide its personnel in passing on any information they learn in the course of their regular duties that can help the international community to prevent, manage, or resolve conflicts. Such procedures would likely need to address additional questions, including whether in-country staff should exchange information directly with their counterparts at other specialized organizations or pass the information up the chain of command for exchange at higher levels; whether in-country staff would need some basic training in spotting

international humanitarian law violations; and whether information about atrocities should be passed on to UN agencies only, or to NGOs and all other relevant actors as well. This form of contribution to the implementation of international humanitarian law does not require IFIs to add investigation of war crimes to their mandate, but simply to recognize that by dint of their position in conflict-affected countries, IFI staff often acquire information that other members of the international community can use.

Support of UN Chapter VII Actions

UN Security Council decisions under Chapter VII can lead to a series of scenarios in which IFIs face decisions about how to engage in conflict areas. For example, when an international tribunal established under Chapter VII authority, such as the ICTY or the tribunal for Rwanda, indicts a head of state for systematic violations of international humanitarian law, an IFI's policy in that state can prove quite important. The IMF talks with Serbia in January 2001 provide a useful example of how IFI policies can help to promote the goals of the United Nations and the international community. In the wake of the ICTY's indictment of Slobodan Milosevic, international donors warned Serbian leaders that the IMF, the World Bank, and Western donors would withhold economic aid if they did not cooperate with the tribunal's demands by the end of March. (Note 34) The World Bank and the IMF also withheld approval of loans to Croatia in mid-1997 because of that country's failure to bring war criminals to justice, to cooperate with the ICTY, and to fulfill its commitments under the Dayton Accords. (Note 35)

In the United States, one important force behind the IMF and World Bank's informal conditioning of aid on cooperation with the tribunal was a provision included in the 2001 Foreign Operations Appropriations Act. (Note 36) Section 564 provides that U.S. executive directors of IFIs will not vote to extend any financial aid to countries that have failed to "take necessary and significant steps to apprehend and transfer to the tribunal all persons who have been publicly indicted by the tribunal." The law also precludes support for financing for programs in which a publicly indicted war criminal is known to have any material interest, or for countries in which a person publicly indicted by the tribunal is residing and in which the competent authorities have failed to notify the tribunal, failed to take appropriate steps to apprehend the indictee, or obstructed the tribunal's work. U.S. voting power at the World Bank, the IMF, and other IFIs often enables it to prevent an IFI from providing financial assistance to a country that is hindering the ICTY's work. In the case of Croatia, the United Kingdom also voted to block the approval of loans until the Croatians surrendered indicted war criminals to the ICTY.

However, Serbia is only one example of a state in which perpetrators of violations of international humanitarian law reside. As powerful and influential organizations in the international community, IFIs should at least consider the impact of their policies in countries where atrocities are committed and investigate the options for using their power and influence to support the efforts of the United Nations and other international actors to protect civilians from atrocities and enforce the obligations of states and individuals under international humanitarian law. Other scenarios in which IFIs face countries that are the object of Chapter VII decisions could include states that are harboring war criminals or sustaining them militarily or economically, indictments by a national tribunal that is supported by a Security Council decision, states that are the target of UN sanctions or other enforcement action because of international humanitarian law violations, or states that are the object of Chapter VII resolutions condemning violations of international humanitarian law. As noted earlier, in these instances IFIs and their individual directors are legally obligated to "have due regard" for such Security Council decisions. Institutions that lend to the private sector, such as the International Finance Corporation, the EBRD, or export credit agencies, can also face questions about how to respond to indictments of individuals for war crimes who manage entities receiving private sector financing.

Formal Conditionality

IFIs regularly make financial assistance subject to the satisfaction of various criteria. Although such conditionality generally targets economic policies believed to be critical to the maintenance or development of economic stability and growth, IFIs (notably the World Bank) have recently applied conditionality to social and legal reforms as well. The

existing use of conditionality provides a foundation to examine whether and how IFIs can use some form of conditionality to help promote greater adherence to and enforcement of international humanitarian law.

One such example includes measures sometimes designated "peace conditionality." Peace conditionality has become a popular subject in recent years, with the UN secretary-general, scholars, and various organizations calling for IFIs to make financial assistance contingent on implementation of peace accords, compliance with international directives, and maintenance of the peace in the aftermath of a conflict. (Note 37) While the central goals of traditional conditionality are macroeconomic stability and economic reform, peace conditionality places the primary emphasis on the implementation of peace accords and the consolidation of peace. For example, in 1997, IMF managing director Michel Camdessus announced that financial assistance to Guatemala depended primarily on timely implementation of the peace accords signed several months earlier. (Note 38) The World Bank and Western donors have used peace conditionality frequently in promoting the timely and effective implementation of the Dayton Accords in Bosnia and Herzegovina. In April 1996, the World Bank and the European Union announced that "international efforts to assist reconstruction in Bosnia and Herzegovina are closely linked to compliance with the conditions stipulated in the peace agreement. Developments on the ground should be constantly reviewed to ensure that aid is conditional on the thorough implementation of the obligations undertaken by all parties, in particular, cooperation with the international tribunal for the prosecution of war criminals." (Note 39) These statements demonstrate the commitment of the IFIs to use their influence to bolster the efforts of the international community in promoting peace, reconstruction, and adherence to international obligations in the aftermath of conflict.

One example of conditionality used by the international donor community but not by IFIs is the United Nations High Commissioner for Refugees "Open Cities" Initiative, adopted in 1997, which provides reconstruction aid for municipalities in Bosnia that publicly declare their willingness to allow minorities to return. Once actual minority returns demonstrate the sincerity of the commitment, UNHCR then provides assistance to the majority community as well as to the returnees. (Note 40) The conditions for the provision of assistance are tailored to each city and the particular needs of the minority community, such as processing paperwork to return homes to their former occupants or school enrollment for minority children.

These uses of peace conditionality serve as an important reference point for the use of conditionality to promote adherence to international humanitarian law. If a peace process collapses, the chances for economic recovery will likely be severely compromised, and if economic policies fail to improve living standards and reduce tensions, the peace process will likely fail. In the same way, if respect for international humanitarian law disintegrates, the resulting atrocities will likely undermine hopes for economic development and stability. Just as IFIs have used peace conditionality to urge states to sign and implement peace accords, they could also contemplate using a similar form of conditionality to give states incentives to implement their international legal obligations. Some participants at the IHL Working Group meeting raised concerns that IFI conditionality in the international humanitarian law arena would result in IFIs interfering in or even dictating the choices of mechanisms for addressing international humanitarian law violations. Decisions about whether and how to establish a truth commission, national tribunal, amnesty program, or any other such mechanism involve a wide range of considerations and factors specific to each country. The use of conditionality to dictate to a country which approach it must use could have an adverse effect on the success of such a mechanism--both by demanding one that is not appropriate in light of the country's specific circumstances and by undermining public support through the appearance of a mechanism imposed from the outside.

However, when peace accords provide for truth commissions, special courts, or other specific mechanisms to address the international humanitarian law violations committed by one or more sides in a conflict, as in El Salvador, Sierra Leone, and Guatemala, peace conditionality can offer an IFI a direct way to influence the implementation and enforcement of international humanitarian law without dictating one particular solution to the government. Rather, an IFI can simply provide the government with a strong incentive to uphold the obligations it accepted in signing the peace accord. Furthermore, the willingness of a government to abide by the terms of a peace accord has important fiscal ramifications with which IFIs can influence the shifting of resources to the tasks obligated in the accord. Establishing a

civilian police force and dismantling a military internal security force as outlined in a peace accord will require a government to alter its spending priorities, an important consideration for IFIs, but will also contribute to an atmosphere in which violations of human rights and humanitarian law will be less likely to occur. Peace conditionality thus serves as one example of how IFIs can play a positive role in international humanitarian law by pursuing existing approaches to carrying out their fundamental economic mandates.

Two additional possible uses of conditionality were suggested at the meeting. During peacetime, IFIs could use conditionality to promote adherence to international legal obligations. Nearly all states are parties to the Geneva Conventions, which require that parties take appropriate measures to implement treaty obligations, including dissemination of and training in the laws of armed conflict. However, few states fulfill these obligations by training their armed forces in the basic principles of international humanitarian law. IFIs could condition the provision of financing and loans on the recipient country's agreeing to train and educate its military and could include discussion of international humanitarian law issues in their policy dialogues with countries that are vulnerable to conflict. Consultation with organizations that focus on this issue, such as the ICRC, would enable an IFI to assess such agreements and discussions adequately.

A more aggressive use of conditionality could involve premising approval for loans and financing on the provision of information about measures taken to comply with international humanitarian law and human rights obligations. Doing so would allow IFIs to ensure that they provide assistance only to states that are fulfilling their obligations under treaty and customary law, whether during peacetime, conflict, or postconflict reconstruction. However, this approach to conditionality would also place a heavier burden on the staff of the IFIs to gather, verify, and assess information about compliance with international obligations--information that affects, but is not necessarily directly part of, their mandate. Although reliance on reports and analyses from other specialized organizations can relieve this burden, many observers remain concerned that conditionality attached to legal obligations will nonetheless require a level of competence in international humanitarian law that may not now, and possibly should not, exist in specialized economic organizations.

The use of formal conditions can also enable IFIs to make a positive contribution to international humanitarian law during conflict. Although IFIs usually suspend operations during conflict, particularly when conflict rages throughout a country and prevents the safe and secure continuation of projects, IFIs do maintain operations in certain circumstances. Examples occur when a conflict erupts in one region of a large country, such as the conflict in Chechnya, along the border regions between two countries, such as the conflict in Kashmir, or when one or more countries are involved in a neighboring conflict, such as in the Democratic Republic of the Congo. In these cases, an IFI will likely be providing financial assistance to a country engaged in conflict and is thus in a position to use its influence, when appropriate, to encourage adherence to international humanitarian law.

One suggestion is for IFIs to condition immediate and future assistance on a country's adherence to certain basic and easily defined obligations during conflict, such as cooperation with efforts to protect civilians and other noncombatants. For example, countries in conflict are generally obligated to provide access to UN rapporteurs, special representatives, special envoys, and representatives of the ICRC and other humanitarian relief agencies. During conflict, the ICRC and other humanitarian agencies provide essential services to the civilian population, securing food, clean water, shelter, and medical care for refugees, internally displaced persons, and other civilians affected by the conflict. The Geneva Conventions and Additional Protocol I grant special access to the ICRC in international armed conflicts to bring relief to wounded, sick, or shipwrecked military personnel; visit prisoners of war; take action on behalf of the civilian population; and ensure that protected persons are treated according to the law. (Note 41) During internal armed conflicts, Article 3 common to the four conventions and Additional Protocol II guarantee the ICRC's right to offer its services to parties in conflict with a view to undertaking relief operations and visiting persons detained in connection with the conflict. (Note 42) UN rapporteurs, special representatives, and special envoys gather information used by the United Nations in determining how to respond to conflict and how to help the countries and parties involved reach a peaceful solution. When the Security Council acts under Chapter VII and calls upon the secretary-general to send a representative to a conflict region, that binding resolution obligates the party or parties in control of that region to allow

such individuals access. Addressing the conflict in Bosnia and Herzegovina in Resolution 1019 (1995), for example, the Security Council demanded "that the Bosnian Serb party give immediate and unimpeded access to representatives of the United Nations High Commissioner for Refugees, the ICRC, and other international agencies." (Note 43)

Although access for both humanitarian agencies and UN representatives is crucial to their ability to fulfill their tasks of assisting the civilian population and seeking a resolution of the conflict, states and other parties to a conflict may restrict such access in part or altogether, often to prevent discovery of acts being committed by both state and nonstate actors in violation of international humanitarian law. Some indicators of compliance with international humanitarian law are difficult for a specialized economic organization to evaluate, even with reliance on other specialized organizations, but objective determinations can be made about a state's fulfillment of these obligations to allow such access. Reports from the United Nations, the ICRC, and other organizations regarding whether particular countries have denied such access offer conclusive evidence about those countries' compliance with their obligations. IFIs could therefore rely on such reports without the need to duplicate the expertise internally. Several participants suggested that by focusing on specific demands and obligations in this manner, IFIs have the opportunity to influence states to uphold these obligations and thus protect the fundamental rights of those most vulnerable during conflict.

Informal Mechanisms

Apart from the application of formal, explicit conditionality to lending decisions, an informal approach can often offer the most effective way for IFIs to support the international community's efforts to implement and enforce international humanitarian law. One informal mechanism arises in the regular Article IV consultations that the IMF holds with client states, which are designed to give the fund an opportunity to monitor its member states' exchange-rate and balance-of-payments policies. Given the impact that humanitarian law violations and conflict can have on economic development and stability, particularly when military expenditures draw resources away from vital macroeconomic applications, the Article IV consultations--which are usually quite broad and can include any issue that can affect a state's balance of payments and exchange rate--could be an appropriate forum in which the IMF can raise concerns with member states. Some participants at the IHL Working Group's February session argued that reference to and discussions about violations of international humanitarian law or a state's failure to cooperate with international efforts to bring perpetrators to justice, without any pronouncements of conditionality, sanctions, or withdrawals of aid, can have an impact on a state's behavior. An IFI that engages in discussions about these issues will thus demonstrate to its member states that it is both aware of and concerned about atrocities and accountability, setting the stage for future opportunities to take international humanitarian law issues into consideration when providing assistance and funding projects.

IFIs can also exercise conditionality informally at the local level by working with other organizations in a postconflict situation to determine how to allocate aid selectively. Rather than set forth formal and specific conditions for the receipt of assistance, IFIs could simply implement their projects and assistance with an eye to rewarding those who uphold their commitments, penalizing those who violate or have violated legal obligations and principles, and encouraging compliance from those who remain ambivalent. This type of approach accomplishes two goals: demonstrating the importance of international legal obligations and the IFIs' desire to promote adherence to such obligations, and encouraging implementation of peace accords and reconstruction efforts. The World Bank has used this method in Bosnia in response to the varying levels of adherence different municipalities have demonstrated with regard to the principles set forth in the Dayton Accords. Working with the Office of the High Representative, the World Bank incorporated an informal screening process for the provision of assistance to municipalities. In essence, when destruction of housing in a particular community prevented the return of refugees, for example, the "High Representative [could] alert donors to the fact that building a house in that community is unlikely to have a lot of success." (Note 44) Cooperation with other specialized organizations on the ground helps the Bank and other IFIs to ensure that their financial assistance is being used for the designated purpose. For example, granting home reconstruction funds to a community in which no effort is being made to prevent homes from being destroyed in the first place is not an efficient use of resources. The cutoff of financial assistance could influence these communities to rethink their commitments to peace accords and legal obligations.

At times, this informal screening process became more public: In 1998, the Bank announced a \$17 million loan for reconstruction in Bosnia's Serb Republic, of which 15 percent was designated for areas under the control of hard-line nationalists. After an outcry from human rights groups and members of the U.S. Congress, the Bank excluded the town of Foca, the site of notorious atrocities where several indicted war criminals continued to live in impunity. (Note 45) Although the decision to target the provision of assistance was driven by pressure from outside, the Bank's action nonetheless demonstrated how financial aid can be tailored to incorporate considerations of international humanitarian law and support the international community's efforts to bring to justice perpetrators of the law's violations. These examples demonstrate that incorporating international humanitarian law concerns into the policymaking process is not just a possible future consideration for IFIs but is already done in certain circumstances.

Four. Conclusions and Recommendations

Economic development and stability can no longer be separated from conflict, postconflict reconstruction, or the commission of atrocities. In many contemporary conflicts, armies and rebel forces battle for control of key resources, destroying economic and social infrastructure and committing massive violations of international humanitarian law in the process. Institutions and organizations dedicated to helping countries achieve economic stability through development and reconstruction cannot afford to ignore the effects of conflict, particularly the impact of violations of international humanitarian law, on their ability to fulfill their mandates.

Indeed, incorporating information about international humanitarian law concerns may help IFIs to pursue their objectives by ensuring that they have all necessary information at their disposal in the design of financing and loan projects. IFIs can also use their influence in some cases to bolster the efforts of the international community to promote greater adherence to and enforcement of international humanitarian law. A thorough examination of the ways incorporating international humanitarian law concerns can improve fulfillment of IFIs' core mandates and advance the policy goals of the broader international community in encouraging adherence to international humanitarian law thus appears to be appropriate.

To this end, the following recommendations offer several ways in which IFIs can build on current policies to support the international community's efforts and make a positive contribution to the implementation and enforcement of international humanitarian law.

Analyzing Links between International Humanitarian Law and Development

Many of the participants agreed that an investigation of the interplay between international humanitarian law violations and economic development and stability would be useful for IFIs in assessing their role in conflict regions and the impact of violations on their mandates and projects. Such a study could be performed by the World Bank, other IFIs, or specialists in the academic or NGO communities. The World Bank's OP 2.30 states a clear need for this type of evaluation, declaring that one of the Bank's objectives in countries in conflict is to "analyze the impact of conflict on economic and social development" (Note 46) In particular, violations of international humanitarian law destabilize society and exacerbate the destructive effects of conflict by adding fear, massive civilian deaths, and displacement to the mix. Notwithstanding the separation of economic and political considerations in the mandates of most IFIs, widespread violations of international humanitarian law raise many political considerations that are highly relevant to the economic concerns on which the IFIs focus.

For example, the Rwandan genocide left the country not only with a legacy of death and the need to hold perpetrators accountable but also with a wholly devastated economic and social structure. According to a recent report of the British House of Commons, however, neither the IMF nor the World Bank "recognized the direct link between growing social tension, human rights abuses, and the subsequent destruction of the entire economic infrastructure" in Rwanda. (Note 47) For these reasons, most participants at the IHL Working Group meeting welcomed the idea of a study that could

analyze whether international humanitarian law violations can serve as reasonably reliable predictors of adverse economic consequences and, if so, identify what conditions and factors produce such links. To the extent that atrocities may be negative economic indicators, information about international humanitarian law violations could prove helpful to IFIs in tailoring their projects and policies to provide the best assistance and services to their member states.

Inclusion of Information about International Humanitarian Law Developments in Watching Briefs and Other IFI Documents

IFIs can obtain information about past, present, and imminent atrocities in several possible ways: from their own personnel on the ground, other specialized international organizations and agencies, humanitarian and human rights NGOs, member governments with a presence in the conflict region, and the media and other public sources. Discussions at the February meeting produced the following suggested mechanisms for obtaining and incorporating information from other organizations with the appropriate expertise.

Reports by Specialized Organizations

IFIs can make use of the reports that other international organizations, member states, and NGOs routinely produce on humanitarian law and human rights violations in countries around the world. Such reports offer documentation of atrocities, explanations of the various actors and the sources of the conflict or abuses, and information about patterns of violations; they also frequently make legal determinations about the nature of the violations. Such information is vital for IFIs not only in assessing how to proceed with their operations in various countries but also in determining when to evacuate personnel on the ground because of safety concerns.

Briefings by the ICRC, UNHCR, and Other Organizations

Routine briefings at the headquarters level on humanitarian law concerns in IFI client states can be provided by organizations with specialized expertise, such as the ICRC, UNHCR, the Office of the UN High Commissioner for Human Rights, and relevant NGOs, and can serve as a key source of information. In-country IFI staff as well may find that briefings on the specific situation and developments in their country or local region are particularly helpful in keeping abreast of events and making appropriate decisions about next steps. An IFI can arrange to have the ICRC, UNHCR, or other specialized organizations provide such briefings to local staff as events warrant. Indeed, a representative of the ICRC serves on the staff of the World Bank's Post-Conflict Unit, providing an important link for such briefings. These arrangements can have the added benefit of laying the framework for a working relationship between the IFI and the specialized organizations.

Development of Guidelines for IFI Personnel

Some participants suggested that IFIs should develop staff guidelines setting forth general principles for the consideration and incorporation of international humanitarian law issues. These guidelines could include procedures for exchanging information with personnel from the United Nations and other specialized organizations on the ground, sources of information about international humanitarian law, and a basic framework for when international humanitarian law issues are appropriately considered within the mandate of the IFIs. Such guidelines could also include the basic principles of international humanitarian law and the major conventions and sources of the law.

Training for IFI Personnel in the Basics of International Humanitarian Law

Although IFIs remain specialized economic organizations, several participants at the IHL Working Group meeting suggested that as international humanitarian law becomes increasingly relevant to their operations, IFIs should pursue basic training for selected employees in the fundamental principles of international humanitarian law. The goal of such training is not to develop an in-house expertise in the law, but to prepare employees in the relevant departments to be

able to exchange information about the law and use appropriate reports and sources of information that can help IFIs fulfill their mandates and support the international community's efforts. Training could be performed by a variety of organizations, including the ICRC, the United Nations Institute for Training and Research, or selected NGOs.

Preconflict Implementation Efforts

Peacetime or preconflict periods offer IFIs a variety of opportunities to make a positive contribution to the implementation of international humanitarian law. One suggestion was that during policy dialogues and other informal discussions, such as the IMF's Article IV consultations, IFI officials can discuss international humanitarian law issues with member states that are at risk of experiencing armed conflict. Doing so could demonstrate that the institution is aware of the possibility of conflict and atrocities and will be focusing attention on such issues should conflict develop, reinforcing that the international community will not ignore the commission of war crimes, genocide, crimes against humanity, and other atrocities during any conflict, whether internal or international. Informal discussions also enable member states to raise their own concerns and seek assistance from the international community in preventing violations of international humanitarian law. In such cases, IFIs could then pass such information on to the appropriate specialized organizations.

Some participants at the February meeting and other scholars have urged that IFIs take more formal action to promote peacetime implementation of basic international legal obligations. One option is for IFIs to investigate the feasibility of requiring countries receiving preconflict assistance to educate their armed forces and civilian populations about international humanitarian law and the norms governing the behavior and protecting the rights of military forces, security personnel, and civilians during conflict situations. Such education and training is a basic obligation of all states that are parties to the 1949 Geneva Conventions. (Note 48) The ICRC and other organizations routinely assess the content and quality of military and civilian training in international humanitarian law, and reports from such organizations can serve as an appropriate framework for evaluating whether a country has met the requirements to receive financial assistance. In this way, IFIs would not need to develop in-house expertise and capacity in evaluating international humanitarian law training but could rely on outside organizations with such expertise.

Many IFI officials have legitimate concerns about any involvement with military forces in countries receiving loans and financial assistance, particularly when those loans are designated for education, judicial reform, or other civilian reforms. These suggestions for promoting peacetime implementation of international humanitarian law do not seek to underestimate such concerns or alter the nature of an IFI's relationship with a country's government and military; rather, they simply point to another way in which IFIs could contribute to the implementation of international humanitarian law. In addition to the potential positive contribution these peacetime and preconflict efforts can make to international humanitarian law, they may also prove useful for IFIs when faced with the eruption of conflict, because a framework for the discussion of humanitarian law issues and atrocities will have already been created during times of less tension and confusion.

IFIs as Potential Allies for the International Community during Conflict

IFIs can make a substantive contribution to the implementation of international humanitarian law by bolstering the efforts of the international community to prevent the escalation and spread of mass violence. As discussed previously, the ICRC, UN rapporteurs, and other relevant actors need access to conflict regions in order to help those in need, seek resolution to the conflict and an end to atrocities, and, perhaps, help bring those accountable to justice--and countries are obligated to provide such access. Less complex than questions of whether particular acts are violations of the Geneva Conventions or the Additional Protocols, issues of access are an appropriate area, it has been suggested, in which IFIs can support the international community through two primary approaches. First, financial assistance and other projects can be conditioned on an agreement to grant access to UN representatives, the ICRC, and other relief organizations. Second, in response to reports from the United Nations and the ICRC that access has been denied in particular areas, IFIs managing projects in those areas can withdraw or suspend assistance to induce national and local

governments to comply with their obligations and agreements to allow access.

ENDNOTES

1. Although this report focuses on the World Bank, the International Monetary Fund, and the regional development banks, the issues and recommendations presented apply to export credit agencies, such as the Export-Import Bank of the United States and the Overseas Private Investment Corporation, and other international financial institutions in the United States and abroad.

2. For the purposes of this report, the IBRD and the IDA are the most important members of the World Bank Group and will be referred to collectively as "the World Bank" or "the Bank."

3. Agreement Establishing the European Bank for Reconstruction and Development, Article 1, available at <http://www.ebrd.com/english/public/index.htm> (hereinafter "EBRD Agreement").

4. World Bank Operational Policy 2.30 (hereinafter OP 2.30), "Development Cooperation and Conflict" (January 2001), paras. 1 and 2.

5. *Ibid.*, paras. 7-9.

6. See John D. Ciorciari, "A Prospective Enlargement of the Roles of the Bretton Woods Financial Institutions in International Peace Operations," 22 *Fordham Int'l L.J.* 292, 337-339 (1998).

7. EBRD Agreement, preamble.

8. *Ibid.*, Article 1.

9. "Lending to Poorest Countries Rises in FY01," World Bank, Press Release 2002/051/S, August 2, 2001. See also Lawyers Committee for Human Rights, *The World Bank Governance and Human Rights*, 2d ed. (New York Lawyers Committee for Human Rights, 1995), 61.

10. "Yugoslavs Act on Hague Trial for Milosevic," *New York Times*, June 24, 2001; and United Nations Security Council Resolution 827, U.N. Doc. S/RES/827 (1993), May 25, 1993; para 4.

11. Ibrahim F. I. Shihata, *The World Bank in a Changing World Selected Essays*, vol. 1 (Boston: M. Nijhoff, 1991), 76.

12. Agreement between the United Nations and the International Bank for Reconstruction and Development, Articles I and VI, approved by the General Assembly on November 15, 1947, Document A/349, September 2, 1947.

13. Shihata, *The World Bank*, 76.

14. Canada, House of Commons, Report of the Standing Committee on Foreign Affairs and International Trade on the Issues of International Financial Institutions Reforms for the Agenda of the June 1995 G-7 Halifax Summit, *From Bretton Woods to Halifax and Beyond. Towards a Twenty-First Summit for the Twenty-First Century Challenge*; available at <http://www.library.utoronto.ca/g7/governmental/hc25>. The Standing Committee recommended that "the Halifax action programme call for the IFIs to take into account in their lending policies and programs the obligation to respect universal human rights, including those of democratic expression, and also the need to implement principles of sound public administration and to support demilitarization, including the reduction of military budgets."

15. See Agreement between the United Nations and the International Bank for Reconstruction and Development,

Articles I and VI.

16. Article IV, Section 10, Articles of Agreement of the International Bank for Reconstruction and Development (hereinafter "IBRD Articles"), opened for signature December 27, 1945, 60 Stat 1440, 2 U.N.T.S. 134, as amended February 19, 1989; available at <http://www.worldbankorg/html/extdr/backgrd/ibrd/arttoc.htm>

17. Article IV, Section 3(b), Articles of Agreement of the International Monetary Fund (hereinafter "IMF Articles"), December 27, 1945, 60 Stat 1401, T.I.A.S. No. 1501, 2. U.N.T.S. 39, amended July 28, 1969, 20 U.S.T. 2775, amended April 1, 1978, 29 U.S.T. 2203.

18. Shihata, *The World Bank*, 75.

19. Ibid.

20. Indeed, the Bank now includes considerations such as female genital mutilation, environmental concerns, and fundamental civil and political rights within its definition of "economic considerations." Massive violations of international humanitarian law, or the commission of atrocities that suggest future widespread violations will probably occur, are at least as likely to affect development and economic stability as these factors already considered by the Bank.

21. Ibrahim F. I. Shihata, *The World Bank in a Changing World Selected Essays*, vol. 2 (Boston: M. Nijhoff, 1995), 577-78; original emphasis.

22. See, for example, *Prosecutor v Tadic*, Case no. IT-94-1-AR72, Decision on the Defense Motion for Interlocutory Appeal on Jurisdiction, October 2, 1995, para. 58-9, in which the Appeals Chamber of the ICTY held that "[i]t would be a travesty of law and a betrayal of the universal need for justice, should the concept of State sovereignty be allowed to be raised successfully against human rights. Borders should not be considered as a shield against the reach of the law and as a protection for those who trample underfoot the most elementary rights of humanity ... [Violations of international humanitarian law] are really crimes which are universal in nature... and transcend the interest of any one State." See also *Barcelona Traction, Light & Power Co., Ltd.* (Belgium v Spain) 1970 I.C.. 3, 33 (February 5): obligations erga omnes, or obligations a state holds toward the international community, "derive, for example, in contemporary international law, from the outlawing of acts of aggression, and of genocide, as also from the principles and rules concerning the basic rights of the human person, including protection from slavery and racial discrimination"; and Philip Alston, "Environment, Economic Development, and Human Rights: A Triangular Relationship?" 82 *Am. Soc'y Int'l Proc.* 40, 54 (1988), arguing that "human rights are not political, they are matters of international law."

23. Shihata, *The World Bank*, vol. 1, 78, citing UN General Assembly, Twenty-First Session, Fourth Committee, Provisional Summary Record of the 1653d meeting, New York, December 3, 1966, UN Doc. A/C.4/SR1653 (December 8, 1966); Samuel A. Bleicher, "UN v. IBRD: A Dilemma of Functionalism," *International Organization* 24 (1970): 31; and Victoria E. Marmorstein, "World Bank Power to Consider Human Rights Factors in Loan Decisions," 13 *J. Int'l & Ec.* 113 (1978).

24. Shihata, *The World Bank*, vol. 1, 81.

25. 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 Int'l L.J.* 331, 346-48 (2000). Sources supporting this claim include studies by international economists, the policies and practices of bilateral and private lenders in their dealings with emerging markets, and the World Bank's own field experience. See Arup Banjeri and Hafez Ghanem, "Does the Type of Political Regime Matter for Trade and Labor Market Practices?" 11 *World Bank Ec. Rev.* 171 (1997); Ibrahim F. I. Shihata, "Environment, Economic Development and Human Rights: A Triangular Relationship?" 82 *Am.*

The role of international financial institutions in international humanitarian law: Report from the International Humanitarian Law Working Group Policy Papers January, 2002

Soc'y Int'l L. Proc. 40, 45 (1988).

26. OP 2.30.

27. *Ibid.*

28. *Ibid.*, para 7.

29. *Ibid.*, para 9(a).

30. Studies investigating the links between widespread violations of international humanitarian law and economic development will be critical for IFIs to make decisions appropriate to any given situation. If research and evidence demonstrates that war crimes, genocide, and other atrocities are negative economic indicators, then all lending and financing institutions, whether international or local, will need to factor information about such atrocities into all decisions regarding projects in conflict areas. An IFI's failure to do so would effectively mean that it was not fulfilling its mandate to address economic considerations.

31. OP 2.30, para 2(a).

32. *Ibid.*, para 2(b).

33. *Ibid.*, para 2(c).

34. "Belgrade Nervous over IMF Talks," *IWPR Balkan Crisis Report*, no. 215 (February 6, 2001).

35. Associated Press, "U.S. Delays \$30 Million World Bank Loan to Croatia," June 25, 1997; "Cook Reins in Tudjman with IMF Loan Veto," *The Times of London*, July 31, 1997; Dow Jones International News Service, "IMF Postpones Approval of \$40 Million Loan to Croatia," July 10, 1997; Dow Jones International News Service, "U.S. Says World Bank to Indefinitely Delay Loan to Croatia," July 1, 1997.

36. Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2001, H.R. 5526 (106th Cong., 2d sess.), Section 564, "Restrictions on Assistance to Countries Providing Sanctuary to Indicted War Criminals."

37. James K Boyce and Manuel Pastor, Jr., "Aid for Peace: Can International Financial Institutions Help Prevent Conflict?" *World Policy Journal* 15 (1998): 42; Robert Skidelsky and Edward Mortimer, "Economic Sanctions as a Means to International 'Health'" (p. 154) and Kevin M. Cahill, "Introduction" (p. 3) in *Preventive Diplomacy: Stopping Wars Before They Start*, ed. Kevin M. Cahill (New York: Basic Books, 1996); "Conflict Prevention Forum, A Guide: Costs and Causes of Conflict in the Greater Horn of Africa: Conditionality/Incentives for Conflict Prevention," available at <http://www.caii-dc.com/ghai/toolbox10.htm> ; African News Service, "Report by Annan Explores Causes, Cures of Africa Conflict," April 16, 1998.

38. Gilles Carbonnier, *Conflict, Postwar Rebuilding and the Economy: A Critical Review of the Literature* WSP Occasional Paper no. 2 (Geneva: War-Tom Societies Project, March 1998), chapter 6.

39. World Bank, Press Release no. 96/S56 (April 13, 1996), "Donors Pledge \$1.23 Billion to Help Rebuild Bosnia: Total Available for 1996 Reconstruction Now Exceeds \$1.8 Billion." See also European Commission/World Bank, Press Release (April 13, 1996), "Chairman's Conclusions of the Second Donors' Conference on the Reconstruction of Bosnia and Herzegovina"

40. UN High Commissioner for Refugees, *Open Cities Initiative* (Sarajevo: UNHCR Office of the Special Envoy and

Office of the Chief of Mission, August 31, 1997).

41. Article 9, Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (hereinafter "First Geneva Convention"), opened for signature August 12, 1949, 75 U.N.T.S. 31, 6 U.S.T. 3114; Article 9, Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (hereinafter "Second Geneva Convention"), opened for signature August 12, 1949, 75 U.N.T.S. 85, 6 U.S.T. 3217; Article 10, Geneva Convention Relative to the Treatment of Prisoners of War (hereinafter "Third Geneva Convention"), opened for signature August 12, 1949, 75 U.N.T.S. 287, 6 U.S.T. 3316; Article 10, Geneva Convention Relative to the Protection of Civilian Persons in Time of War (hereinafter "Fourth Geneva Convention"), opened for signature August 12, 1949, 75 U.N.T.S. 287, 6 U.S.T. 3516; Article 5, Protocol I Additional to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of International Armed Conflicts (hereinafter "Additional Protocol I"), opened for signature at Berne, December 12, 1977, U.N. Doc. A/32/144 Annex I, reprinted in 16 I.L.M. 1391 (1977). Protocol II Additional to the Geneva Conventions of 12 August 1949 and Relating to the Protection of the Victims of NonInternational Armed Conflicts (hereinafter "Additional Protocol II"), opened for signature at Berne, December 12, 1977, U.N. Doc. A/32/144 Annex II, reprinted in 26 I.L.M. 561 (1987) also requires that impartial and humanitarian relief actions for the civilian population be permitted, subject to the consent of the parties. In the event that a state consents to such relief actions and then later denies access, IFIs can use their influence to urge the country to reinstate such access.

42. Geneva Conventions, common article 3, Additional Protocol II, Article 18.

43. United Nations Security Council Resolution 1019, S/RES/1019 (1995), November 9, 1995, para. 2.

44. Interview with Rory O'Sullivan, director of the World Bank's resident mission in Bosnia and Herzegovina, in *War Report*, no. 51 (May 1997), 32.

45. R. Jeffrey Smith, "At U.S.'s Behest, World Bank Won't Finance Water Project," *Washington Post*, January 3, 1998, A16.

46. OP 2.30, para 2(b)(iii). The Operational Policy further states that recognizing the incomplete links between development assistance and conflict, the Bank's analytical work in the area of conflict attempts to increase an understanding of the root causes, catalysts, indicators, and policy implications of conflict and post-conflict recovery." International humanitarian law violations fall squarely within this framework. In particular, "conflict analysis incorporates a judgment about the degree to which poverty reduction activities... (b) are negatively affected by war-related destruction and destabilization of normal socioeconomic activity as well as by the diversion of public resources from development purposes to military and other expenditures incurred in waging war"; OP 2.30, para. 5 and note 11.

47. House of Commons, International Development Committee, *Conflict Prevention and Post-Conflict Reconstruction, Volume I: Report and Proceedings* (London: The Stationery Office, 1999), para. 59.

48. First Geneva Convention, Chapter VIII; Second Geneva Convention, Chapter VII; Third Geneva Convention, Part VI, Section 1; Fourth Geneva Convention, Part IV, Section 1.

LOAD-DATE: November 20, 2002

LANGUAGE: ENGLISH