

WHY CONFLICT BETWEEN ECONOMIC DEVELOPMENT AND INTERNATIONAL SOCIAL RIGHTS GOVERNANCE IS INEVITABLE

*Desirée LeClercq**

ABSTRACT

International organizations mandated to govern social rights are colliding with international organizations mandated to govern economic development. While disagreeing with the nature of fragmentation and conflict across international organizations, legal and social science scholars offer various proposals to unify global governance. Those proposals assume that unification will come naturally. That assumption is wrong.

The distinct legal instruments that govern and control international organizations render conflict inevitable and unification improbable. By closely examining the pandemic-related activities carried out by the International Labor Organization, the World Bank, and the International Monetary Fund in the same 41 countries, the implications of that conflict become clearer. Governments must choose between competing approaches and activities to the detriment of coherence, national policies, and organizational legitimacy. To protect against those perils, international organizations must cooperate on an in-country basis, which would allow them to overcome narrow conflict while respecting their conflicting constitutional mandates.

* Assistant Professor of International Labor Law, Cornell ILR School & Associate Member of the Law Faculty, Cornell Law School. The author would like to thank Frederic Claus, Franz Christian Ebert, Ekkehard Ernst, and Jack Getman, as well as participants in the Fall 2020 Geneva Macro Labs workshop. Any remaining errors are my own. Nothing in this Article reflects the views of any institution within which I have worked.

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INTRODUCTION

Social rights and economic development are colliding. Particularly during the COVID-19 pandemic, governments have struggled to reconcile their competing objectives of saving money through austerity and administering costly social protections. Governments often look to international organizations responsible for social rights and economic development to provide cohesive advice and policies that strike the appropriate balance.¹ Those organizations have not risen to the occasion. For those of us who have worked within and studied international organizations for some time, that failure comes as no surprise.

This Article is about the inevitable tension between international organizations designed to govern economic development and those designed

¹ See MICHAEL ZÜRN, A THEORY OF GLOBAL GOVERNANCE 52-53 (2020) (describing the manner in the authorities of international organizations are epistemic, meaning that those organizations provide interpretations, “expert knowledge,” and “moral authority” owing to their unique positions in global governance). See also *infra* Part I.

to govern social rights, particularly when their activities overlap.² International organizations have always been fragmented; their member governments designed them that way.³ They have distinct legal instruments, whether in the form of articles of agreements or constitutions, that define their objectives, priorities, and approaches.⁴ Those legal instruments, much like the U.S. Constitution,⁵ are not easily amended.⁶ Their terms, conditions, and ideological underpinnings significantly control their activities.⁷ Therefore, when discharging their unique legal instruments, it is natural that those organizations tend not to perform in unison.⁸ The bigger yet underexplored issues concern the impact of their activities when they overlap and the implications of that impact for governments and global governance.

² Overlap in this context means, as described above, the activities and policies of more than one international organizations with the appropriate mandate and subject-matter expertise target a common issue. See R. Herr & E. Chia, *The Concept of Regime Overlap: Towards Identification and Assessment*, in *OVERLAPPING MARITIME REGIMES: AN INITIAL RECONNAISSANCE* 18 (B W Davis, ed. 1995); Matthias Kranke, *Exclusive expertise: the boundary work of international organizations*, 2 *REV. INT’L POL. ECON.* (2020); Oran R. Young, *Institutional Linkages in International Society: Polar Perspectives*, 2 *GLOBAL GOVERNANCE* 6 (1996).

³ See *infra* Part II.B.

⁴ See MALCOLM N. SHAW, *INTERNATIONAL LAW* 944 (2014) (arguing that the “nature, status and authority of [international] organizations will therefore depend primarily upon the terms of the constituent instruments or constitutions under which they are established.”).

⁵ See generally Douglas Linder, *What in the Constitution Cannot be Amended*, 23 *ARIZ. L. REV.* 717 (1981) (discussing the limitations to constitutional amendments).

⁶ See JAN KLABBERS, *THE LAW OF INTERNATIONAL ORGANIZATIONS* 29 (2015) (describing the constitutional amendments process as “a cumbersome and protracted process...”). Recognizing the difficulties in formal constitutional amendments, international organizations make subtle changes through their internal interpretations of their constitutional instruments. See Julian Arato, *Treaty Interpretation and Constitutional Transformation: Informal Change in International Organizations*, 38 *YALE J. INT’L L.* 289, 290 (2013) (describing the phenomena of “informal constitutional change or transformation” and arguing that it can lead to “dramatic” changes in organizational behavior). I do not disagree that international organizations can internally change their own processes. See generally Desirée LeClercq, *Sea Change: New Rulemaking Procedures at the International Labour Organization*, 22 *ILSA J. INT’L & COMP. L.* 105 (2015) (arguing that the International Labor Organization changed its amendments process through treaty). However, I disagree that those types of internal changes can be as “dramatic” as to go against the very ideological grain of constitutional direction. This point is further elaborated in Part II.

⁷ See JAN KLABBERS, *INTERNATIONAL ORGANIZATIONS* 6 (2005) (describing the “hurdle in the shape of the organization’s mandate” including economic organizations that may only consider human rights obligations “if these can be subsumed as economic considerations...”).

⁸ See SHAW, *supra* note 4, at 46-47 (noting the increasing fragmentation across international organizations’ activities).

Scholars justifiably lament fragmented⁹ global governance.¹⁰ They point out, for example, the notoriously conflicting economic policies advanced by World Bank¹¹ and the International Monetary Fund (IMF), on the one hand, and the labor policies advanced by the rights-based International Labor Organization (ILO), on the other.¹² Although those organizations all participate within the United Nations (UN) system's penumbra and have committed to the UN's Sustainable Development Goals (SDGs),¹³ their policies and activities continue to diverge. The resulting fragmentation pits economic policies against rights policies, requiring governments to choose between authorities and among international resources.

The multidimensional COVID-19 pandemic provides rich material against which to weigh theories of overlap and cohesion. The national lockdowns and business closures to "flatten the curve" have impacted over 81 percent of the global workforce's 3.3 billion people,¹⁴ resulting in the

⁹ See Harlan Grant Cohen, *Fragmentation*, in CONCEPTS FOR INTERNATIONAL LAW 315 (2020) (arguing that concerns over fragmentation in the international legal order has been a significant source of anxiety for international lawyers).

¹⁰ See, e.g., ZÜRN, *supra* note 1, at vi (describing global governance and the international organizations with it as "fundamentally flawed" and efforts to resolve global crises as "meager at best."); BRUCE JENKS & BRUCE JONES, UNITED NATIONS DEVELOPMENT AT A CROSSROADS p. iii (NYU Center on Int'l Coop., Aug. 2013) ("the UN development system is hopelessly fragmented and has not adapted to fundamental changes in the global economy, and as a consequence, its impact is in doubt."); See, e.g., Rakhyun Kim, *Is Global Governance Fragmented, Polycentric, or Complex? The State of the Art of the Network Approach*, 22 INT'L STUDIES REV. 903 (2020).

¹¹ The Bank fits into the Specialized Agency category through a 1947 agreement that recognizes the Bank as an "independent specialized agency" of the UN as well as a member or observer in many UN bodies. See SUMMARY OF AGREEMENT BETWEEN THE BANK AND THE UNITED NATIONS, at

https://timeline.worldbank.org/themes/timeline/pdfjs/web/viewer.html?file=//timeline.worldbank.org/sites/timeline/files/timeline/archival-pdfs/event12_UNagt_summary_30151250.pdf. The term "World Bank" traditionally refers to two institutions of the World Bank Group that engage with the public sector: the International Bank for Reconstruction and Development (IBRD) and the International Development Association (IDA). This Article will similarly use the term World Bank to refer to both entities.

¹² See, e.g., Franz Christian Ebert, *A Public Law Perspective on Labour Governance by International Financial Institutions*, 17 INT'L ORG. L. REV. 105, 113-118 (2020) (describing conflicts between the IMF's labor-market guidance to governments and the International Labor Organization's labor norms).

¹³ See *infra* p. 12.

¹⁴ See ILO Monitor: COVID-19 and the World of Work 2 (2nd ed., 7 April 2020), at https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/briefingnote/wcms_740877.pdf. See also World Bank, *COVID-19 Response Paper*, at 7 (noting that three out of every four workers in the global workforce have been impacted by job closures).

“most severe crisis since the Second World War.”¹⁵ The loss of jobs and factory closures have stalled the production of goods along supply chains,¹⁶ thereby slowing global economic growth to a projected 3 percent, a rate far worse than during the 2008-9 economic crisis.¹⁷ In a vicious cycle, employment losses have driven down national economies, further contributing to “devastating impacts on employment.”¹⁸ Now, more than ever, labor and economic recoveries must converge. If the ILO, World Bank, and the IMF hope to assist their government members to recover, their respective activities must coalesce.¹⁹

This Article is both comparative and normative. I compare the COVID-19 recovery activities of the ILO, the IMF, and the World Bank in the same countries over the same period of time. Two underlining questions guide my analysis. First, are those overlapping activities complementary, inconsistent, or incompatible? Second, if and when those overlapping activities are incompatible, what are the implications for governments and for the legitimacy²⁰ of the international organizations?

After describing several instances of incoherence and incompatibility across COVID-19 recovery activities, I turn to my normative claim. Current scholarship presupposes that incompatibility between international organizations’ activities is temporary, benign, and otherwise reconcilable. That scholarship underappreciates the inevitability of gridlock between

¹⁵ See *ILO Monitor: COVID-19 and the World of Work: Impact and Policy Responses 3* (1st. ed., March 18, 2020), at https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/briefingnote/wcms_738753.pdf [hereinafter, ILO First Monitor]. See also IMF, *WORLD ECONOMIC OUTLOOK v* (April 2020) (“[i]t is very likely that this year the global economy will experience its worst recession since the Great Depression, surpassing that seen during the global financial crisis a decade ago.”), <https://www.imf.org/en/Publications/WEO/Issues/2020/04/14/weo-april-2020>; see also World Bank, *GLOBAL ECONOMIC PROSPECTS* 136-37 (June 2020), <https://www.worldbank.org/en/publication/global-economic-prospects>.

¹⁶ See ILO First Monitor, *supra* note 15, at 2; *GLOBAL ECONOMIC PROSPECTS*, *supra* note 15, at 143.

¹⁷ See *WORLD ECONOMIC OUTLOOK*, *supra* note 15, at 3.

¹⁸ See UN Policy Brief: *The World of Work and COVID-19*, 13 (June 2020), at https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/genericdocument/wcms_748428.pdf.

¹⁹ *Id.*

²⁰ Drawing from Klaus Dingwerth and Antonia Witt, the term “legitimacy” refers to “a property of rightfulness actors ascribe to an institution” whereas the term “legitimation” refers to “the process through which the institution...acquires that property in the eyes of a particular audience.” See Klaus Dingwerth & Antonia Witt, *Legitimation Contexts: A Theoretical Context*, in *INTERNATIONAL ORGANIZATION UNDER PRESSURE: LEGITIMATING GLOBAL GOVERNANCE IN CHALLENGING TIMES 1* (Klaus Dingwerth, Antonia Witt, Ina Lehmann, Ellen Reichel, & Tobias Weise, eds. 2019). By de-legitimation, I refer to the loss of that property in the eyes of a particular audience.

economic and rights-based policies and over-appreciates the constructive process of evolving norms. Drawing from the legal charters of the ILO, the World Bank, and the IMF, I argue that the respective rights-based and economic activities of those international organizations will inevitably conflict. That inevitability has significant implications for governments, which must prioritize competing international obligations, and to global governance more broadly, which suffers from delegitimization. It also renders unification on an institutional level improbable. To set out those arguments, this Article is organized as follows.

Part I contains the comparative portion. Examining the overlapping COVID-19 recovery activities carried out in 41 countries, it demonstrates the manners in which the ILO, the IMF, and the World Bank's COVID-19 recovery activities conflict with one another in recipient countries. I explain how that conflict requires governments to choose between competing international obligations and resources.

Part II synthesizes the scholarship surrounding organizational overlap. I argue that the scholarship fails to appreciate the immediate costs of inevitable overlap in countries and overlooks the previously unsuccessful attempts of government members such as the United States to reconcile tensions between economic and rights-based approaches. I argue that a legal institutionalist theory better explains the nature and implications of divergence in overlapping activities. That theory recognizes the role of various charters in controlling institutional approaches, ideologies, and activities.

Part III discusses the consequences of these findings. Proposals to reconcile rights-based and economic approaches on an institutional level fail to account for the restrictive role of legal instruments. I propose a more modest approach. International organizations, through a pre-existing UN platform, should adopt a mandatory form of coordination that requires staff to discuss in-country projects during the design stage (*ex-ante*). That limited coordination would allow organizations to negotiate their approaches on a narrow (and thus resolvable) basis before those organizations impose conflicting obligations and priorities in developing countries.

I. COVID-19 ACTIVITIES

Scholars are fascinated by the fragmentation of international organizations.²¹ Some fear that fragmentation between international organizations that govern social rights and those that govern economic development will result in a

²¹ See Ebert, *supra* note 12, at 113-118 (describing the IMF's labor-market guidance to governments and conflicts with the ILO's labor norms).

weakening of rights.²² Governments in developing countries have a vested interest in attracting economic resources.²³ Economic-based international organizations such as the IMF and the World Bank provide those resources and advise governments on how to best use them.²⁴ Rights-based international organizations such as the ILO are at a decisive disadvantage. Although they provide technical assistance and capacity-building, they do not offer financial resources.²⁵ When the policies of the respective organizations conflict, governments, particularly those in developing countries, may be more likely to follow the approach linked to tangible economic resources to the detriment of rights.

Scholars interested in fragmentation between rights-based and economic international organizations have, until now, been unable to examine the effects of direct overlap between those organizations in the same country.²⁶ International organizations carry out their activities at different times and for different purposes. For example, a government may request the ILO's advice and assistance while it is considering whether to ratify an ILO convention or in response to the ILO's supervisory bodies. Those same governments may seek financial resources from the IMF or investment loans from the World Bank. Nevertheless, those requests, and the corresponding activities across those organizations, will vary temporally and thematically; overlap would be coincidental.

The pandemic has synchronized the timing and objectives of international organizations' activities. As discussed above, the pandemic's multidimensional nature requires recovery efforts that are equally multidimensional. To ensure transparency regarding their contributions, the ILO, the World Bank, and the IMF maintain COVID-19 dedicated websites²⁷

²² See Robert G. Blanton, Shannon Lindsey Blanton, & Dursun Peksen, *The Impact of IMF and World Bank Programs on Labor Rights*, 68 POL. RES. QUART. 324, 324-325 (2010) (describing concerns among labor advocates that the World Bank and IMF's economic policies will be carried out to the detriment of rights).

²³ *Id.* at 325 (describing the manners in which World Bank and IMF policies influence government policies).

²⁴ *Id.*

²⁵ See generally ILO, RULES OF THE GAME: AN INTRODUCTION TO THE STANDARDS-RELATED WORK OF THE INTERNATIONAL LABOUR ORGANIZATION 118 (2019) [hereinafter, RULES OF THE GAME] (describing the ILO's assistance to its government members, which is limited to technical assistance such as advice, missions, promotional activities, and workshops).

²⁶ For a recent effort, see Damien Grimshaw, *International Organisations and the future of work: How new technologies and inequality shaped the narratives in 2019*, 62 J. IND. REL. 477, 479 (2020) (comparing the flagship reports of five international organizations).

²⁷ See ILO, *COVID-19 and the world of work (COVID-19 and the world of work)* (2020), <https://www.ilo.org/global/topics/coronavirus/lang--en/index.htm>; IMF, *The IMF and*

that act as portals of information concerning their recovery objectives and in-country activities.

Between January²⁸ and June 2020, the ILO, the IMF, and the World Bank initiated overlapping COVID-19 recovery activities in 41 countries.²⁹ That is, those organizations all initiated recovery activities in those countries targeting the same four labor and economic policies: (1) occupational safety and health (OSH); (2) labor legislation; (3) wages and employment benefits; and (4) income tax. To categorize the nature and degree of divergence across overlapping activities, the following sections categorize activities as either: (i) complementary; (ii) inconsistent; or (iii) incompatible with one another. Apart from OSH activities, as explained below, most of those overlapping activities are either inconsistent or incompatible.

A. Complementary Labor-Related Policies

Out of the 41 COVID-19 recovery activities reviewed, every overlapping project that implicates national OSH policies has been complementary. The World Bank's COVID-19 programs all expressly aim to "strengthen national systems for public health preparedness" in beneficiary countries.³⁰ Similarly, the ILO's COVID-19 projects provide resources and technical guidance to governments concerning OSH practices and resources. In their activities, the ILO and the World Bank both incorporate the guidelines established by the WHO.

To illustrate, in Bangladesh, the World Bank's COVID-19 project provides resources such as personal protective equipment (PPE) and provides guidance to health workers on the World Health Organization (WHO) OSH procedures.³¹ While the World Bank's project targets the healthcare sector,

COVID-19 (Coronavirus) (Sept. 2020), <https://www.imf.org/en/Topics/imf-and-covid19>; World Bank, *The World Bank Group and COVID-19 (coronavirus)*, (Sept. 2020), <https://www.worldbank.org/en/who-we-are/news/coronavirus-covid19>.

²⁸ Although the World Health Organization did not formally declare the spread of COVID-19 to be a pandemic until March 2020, the disease had begun to spread and thus warranted international assistance as early as mid-January, 2020. This Article therefore includes activities that began in mid-January, when international organizations effectively began providing COVID-19 dedicated assistance to their member governments.

²⁹ Afghanistan, Bangladesh, Benin, Bolivia, Bosnia & Herzegovina, Burkina Faso, Cabo Verde, the Central African Republic (CAF), Chad, the Democratic Republic of Congo (DRC), Côte d'Ivoire, Djibouti, Ecuador, Egypt, Ethiopia, Gabon, the Gambia, Ghana, Georgia, Honduras, Jordan, Kenya, the Kyrgyz Rep., Liberia, Malawi, the Maldives, Mali, Mauritania, Moldova, Mongolia, N. Macedonia, Rwanda, São Tomé & Príncipe (STP), Senegal, Sierra Leone, Tajikistan, Togo, Tunisia, Uganda, Uzbekistan and Yemen.

³⁰ See *infra* pp. 21-22.

³¹ See World Bank, *Bangladesh: COVID-19 Emergency Response and Pandemic*

the ILO is designing and translating COVID-19 workplace guidance throughout the country, in collaboration with the WHO, and is providing targeted OSH assistance to local garment factories.³² This complementarity is also taking place in Yemen, where the ILO distributes medical kits for “both apprentices and master crafts persons,”³³ while the World Bank is providing OSH resources and materials to the healthcare industry.³⁴ These activities are not duplicative but instead appear to reinforce and strengthen national OSH measures.

B. Inconsistent Labor-Related Policies

In contrast to their complementary OSH policies, some of the labor-related policies between the ILO and the World Bank are inconsistent, by which I mean that their COVID-19 activities target the same labor-related policy but apply different legal standards. At this nascent stage of COVID-19 efforts, it is premature to determine whether those policies will be benign or incompatible; nevertheless, there is sufficient information to raise preliminary flags.

One notable example concerns the simultaneous policy guidance provided by the ILO and the World Bank concerning the same national labor laws in countries. Through its supervisory machinery and COVID-19 activities, the ILO is advising governments to bring their national laws into compliance with its international labor standards.³⁵ However, by way of its projects’ sustainable development commitments,³⁶ twelve³⁷ of the World Bank’s 41 projects concretize those same national labor laws for purposes of

Preparedness Project 5 (March 2020),

<http://documents1.worldbank.org/curated/en/926091585406468147/pdf/Project-Information-Documents-Bangladesh-COVID-19-Emergency-Response-and-Pandemic-Preparedness-Project-P173757.pdf>.

³² See ILO, *Country Policy Responses: Bangladesh* (2020), <https://www.ilo.org/global/topics/coronavirus/regional-country/country-responses/lang--en/index.htm#BD>.

³³ See ILO, *Country Policy Responses: Bangladesh* (2020), <https://www.ilo.org/global/topics/coronavirus/regional-country/country-responses/lang--en/index.htm#YE>.

³⁴ See World Bank, *Yemen COVID-19 Response Project (P173862)* (March 2020), <http://documents1.worldbank.org/curated/en/410151585105238966/pdf/Project-Information-Documents-Yemen-COVID-19-Response-Project-P173862.pdf>.

³⁵ See, e.g., ILO, ILO STANDARDS AND COVID-19 (CORONAVIRUS) FAQ (2020).

³⁶ By “sustainable development” commitments, this Article is referring to the World Bank’s Environmental and Social Standards (ESS) that are incorporated into all of the World Bank’s in-country programs. Further details are provided *infra* pp. 20-21.

³⁷ Egypt, Ethiopia, Ghana, Georgia, Jordan, Kenya, the Kyrgyz Rep., Liberia, Maldives, Rwanda, Tajikistan, Uzbekistan.

the World Bank's recovery project. The ILO's advice may result in no changes or changes that do not impact the World Bank's project. It is equally possible that the ILO may incentivize progressive legislative amendments, which could then challenge the stasticity demanded in the World Bank's projects. In any event, the different objectives of those projects show a lack of coordination at the development stage. Two examples of these inconsistent activities are provided below.

In the Maldives, the World Bank's COVID-19 project contains a sustainable development commitment ensuring compliance with the government's laws, regulations, and ratification of the ILO's fundamental conventions.³⁸ However, the ILO's supervisory bodies have raised concerns about whether the government – through those same national labor laws – effectively implements its commitments to the ILO's conventions.³⁹ If the government revises its labor laws to address the ILO's supervisory concerns, it runs the risk of contravening the World Bank's sustainable development commitment, and vice versa.

Similarly, in Georgia, the World Bank's COVID-19 project contains a sustainable development commitment to the existing national labor code.⁴⁰ Simultaneously, the ILO's COVID-19 project is revising that same labor code to align with ILO norms.⁴¹ Once again, if the government amends its labor code in response to the ILO's efforts, the World Bank's incorporation of the outdated labor code may raise substantive questions.

C. Incompatible Labor-Related Policies

Many of the labor-related policies across the organizations' COVID-19 activities were incompatible. By incompatible, I mean that governments cannot implement the policy mandated in one organization's activity without violating the commitment or recommendation within another organization's

³⁸ See World Bank, *Maldives COVID-19 Emergency Response and Health Systems Preparedness Project 6* (March 2020)

<http://documents1.worldbank.org/curated/en/644271585022364356/text/Appraisal-Environmental-and-Social-Review-Summary-ESRS-Maldives-COVID-19-Emergency-Response-and-Health-Systems-Preparedness-Project-P173801.txt>.

³⁹ See ILO, ILC, 108th Sess. *Direct Request, Worst Forms of Child Labor Convention, 1999 (No. 182) – Maldives* (2019).

⁴⁰ See World Bank, World Bank, *Appraisal Environmental and Social Review Summary Appraisal Stage – Georgia*, 10 (April 2020),

<http://documents1.worldbank.org/curated/en/223811587860848921/text/Appraisal-Environmental-and-Social-Review-Summary-ESRS-Georgia-Emergency-COVID-19-Project-P173911.txt>.

⁴¹ See ILO, *Country Policy Responses: Georgia* (July 1, 2020) <https://www.ilo.org/global/topics/coronavirus/regional-country/country-responses/lang--en/index.htm#GE>.

activity. Those incompatible activities arose most frequently between the COVID-19 activities of the ILO and the IMF, but also arose occasionally between ILO and World Bank activities.

Twenty-one⁴² of the IMF's COVID-19 loan arrangements encourage increased public spending to recover from the pandemic, but on condition that the government reverts to the IMF's traditional structural and fiscal policies "as soon as" or "once" the pandemic abides. Thirteen⁴³ of its arrangements, by contrast, explicitly call for immediate reductions in wages, worktime programs, or employment benefits, or increases in taxes. Furthermore, and contrary to the IMF's assurances,⁴⁴ the IMF's 41 COVID-19 arrangements frequently incorporate the recipient governments' pre-pandemic commitments. Ten⁴⁵ of those arrangements incorporate commitments that implicate labor policies.

For example, in April 2020, the IMF prepared a Staff Report recommending the approval of the Central African Republic (CAF) request for disbursement under the IMF's Rapid Credit Facility (RCF) loan, which was approved by the IMF Executive Board for US \$38 million.⁴⁶ In its staff report, the IMF lists the specific reasons for recommending the approval of the CAF's request.⁴⁷ Among those reasons, the IMF emphasizes that: "The authorities must continue implementing the policies and structural reforms to which they committed under the ECF arrangement."⁴⁸ The IMF's "ECF arrangement," in turn, refers to its three-year arrangement under the Extended Credit Facility.⁴⁹ That arrangement, which the IMF Executive Board approved for US \$115.1 million in January 2020, contains several specific structural reform conditions.⁵⁰ Those conditions include reforming the labor

⁴² Bangladesh, Benin, Burkina Faso, Chad, Côte d'Ivoire, Djibouti, Ecuador, Gabon, Ghana, Honduras, Jordan, Kenya, the Kyrgyz Republic, Mali, Mauritania, Moldova, Mongolia, N. Macedonia, Tunisia, Uganda, Uzbekistan.

⁴³ Bangladesh, Benin, Burkina Faso, Cabo Verde, Chad, Côte d'Ivoire, Djibouti, Honduras, Jordan, Kenya, the Kyrgyz Republic, Moldova, N. Macedonia.

⁴⁴ See *infra* pp. 24-25.

⁴⁵ Bosnia & Herzegovina, Cabo Verde, CAF, DRC, Ethiopia, Georgia, Honduras, Liberia, Malawi, Rwanda, Senegal, Sierra Leone, STP, Tunisia.

⁴⁶ See IMF, *Request for Disbursement Under the Rapid Credit Facility – Central African Republic*. International Monetary Fund African Dept. (April 2020) <https://www.imf.org/en/Publications/CR/Issues/2020/04/28/Central-African-Republic-Request-for-Disbursement-under-the-Rapid-Credit-Facility-Press-49378>.

⁴⁷ *Id.*

⁴⁸ *Id.* at p.10, para. 27.

⁴⁹ See IMF, *Request for Three-Year Arrangement Under the Extended Credit Facility – Central African Republic*. International Monetary Fund African Dep. (Jan. 2020) <https://www.imf.org/en/Publications/CR/Issues/2020/01/13/Central-African-Republic-Request-for-a-Three-Year-Arrangement-under-the-Extended-Credit-48940>.

⁵⁰ *Id.*

code to “improve the business environment” by capping fines for labor violations⁵¹ and “strengthening” the tax on wages by removing previously granted exceptions to the income tax.⁵²

While the IMF COVID-19 activities in the CAF invoke pre- or extra-pandemic lending conditionality, the ILO and World Bank COVID-19 activities in that country aim to protect workers. The ILO’s project specifically focuses on strengthening the capacity of national workers to adjust to the work-related impacts of COVID-19 under existing labor laws.⁵³ Suppose the government amends those laws to provide employers greater latitude to violate labor laws, as promised. In that case, it will obstruct the ILO’s attempts to strengthen workers’ protections under current legislation. The World Bank’s COVID-19 project focuses on strengthening the capacity and conditions of work for civil servants⁵⁴ who may also be impacted by the IMF’s efforts to curb public spending.

The CAF case was not extraordinary. In Senegal, for instance, the IMF’s COVID-19 arrangement stresses that “macroeconomic policies continue to be guided by the objectives of the [current arrangement] to the extent possible.”⁵⁵ Notably, one of those policies includes revising “rigid” labor regulations to strengthen the private-sector climate.⁵⁶ Meanwhile, the ILO’s COVID-19 project includes advising the Senegalese government on implementing existing labor regulations through dialogue with workers.⁵⁷

There are additional incompatibilities between IMF and ILO COVID-19 activities concerning wages and employment benefits. For instance, in Djibouti, the ILO is working with the Ministry of Labor and the workers’ and employers’ associations to mitigate the impact of COVID-19 on its labor market and social protection scheme.⁵⁸ Meanwhile, the IMF’s COVID-19

⁵¹ *Id.* at p.16, para. 28.

⁵² *Id.* at 14, para. 18.

⁵³ See ILO, *Country Policy Responses: Central African Republic* (2020), <https://www.ilo.org/global/topics/coronavirus/country-responses/lang--en/index.htm#CF>.

⁵⁴ See World Bank, *Appraisal Environmental and Social Review Summary Appraisal Stage – Central African Republic*, (April 2020).

⁵⁵ See IMF, *Senegal: Request for Disbursement Under the Rapid Credit Facility and Purchase Under the Rapid Financing Instrument*, 2 (April 2020), <https://www.imf.org/en/Publications/CR/Issues/2020/04/16/Senegal-Request-for-Disbursement-Under-the-Rapid-Credit-Facility-and-Purchase-Under-the-49335>.

⁵⁶ See IMF, *Senegal: Request for a Three-Year Policy Coordination Instrument* Jan. 2020), <https://www.imf.org/en/Publications/CR/Issues/2020/01/18/Senegal-Request-for-a-Three-Year-Policy-Coordination-Instrument-Press-Release-Staff-Report-48958>.

⁵⁷ See ILO, *Country Policy Responses: Senegal* (June 2020), <https://www.ilo.org/global/topics/coronavirus/country-responses/lang--en/index.htm#SN>.

⁵⁸ See ILO, *Country Policy Responses: Djibouti* (April 2020),

loan arrangement commits the Djibouti government to reduce the “costs of production,” including labor costs.⁵⁹

In Jordan, the ILO is working with the Ministry of Labor and the Ministry of Social Development to shape policies to respond to the crisis by limiting the negative impacts on employment benefits.⁶⁰ This assistance includes technical advice on social security protection.⁶¹ Simultaneously, the IMF has awarded the Jordanian government with emergency financial assistance because it took immediate measures to “maintain macroeconomic stability” that included a “temporary reduction in social security contributions.”⁶²

II. THE EXPLANATION OF CONFLICT

The COVID-19 activities provide a unique opportunity to compare overlapping efforts and policies across international organizations and within recipient governments. They also expose the conflicting approaches of the ILO, the IMF, and the World Bank. The ILO, which takes a rights-based approach, offers governments assistance to enable its member governments to formulate labor and economic policies. The ILO’s activities are process-oriented, meaning it basis its advice and assistance on consultations with the government and local stakeholders. The IMF and World Bank, by contrast, take an economic approach and offer governments financial resources based on prescribed policies. Some of those policies reduce public spending for labor policies or concretize existing labor law commitments. The contrasting approaches of these organizations are significant. Although the pandemic has synthesized the activities of those international organizations, the UN’s previous initiatives to align economic and social rights facilitated their overlap.⁶³

<https://www.ilo.org/global/topics/coronavirus/regional-country/country-responses/lang--en/index.htm#DJ>.

⁵⁹ See IMF, *Djibouti: Requests for Disbursement Under the Rapid Credit Facility and Debt Relief Under the Catastrophe Containment and Relief Trust* (May 2020), <https://www.imf.org/en/Publications/CR/Issues/2020/05/12/Djibouti-Requests-for-Disbursement-Under-the-Rapid-Credit-Facility-and-Debt-Relief-Under-the-49410>.

⁶⁰ See ILO, *Country Policy Responses: Jordan* (May 2020), <https://www.ilo.org/global/topics/coronavirus/regional-country/country-responses/lang--en/index.htm#JO>.

⁶¹ *Id.*

⁶² See IMF, *Jordan: Request for Purchase Under the Rapid Financing Instrument*, 10, para. 9 (May 2020) <https://www.imf.org/en/Publications/CR/Issues/2020/05/28/Jordan-Request-for-Purchase-Under-the-Rapid-Financing-Instrument-Press-Release-Staff-Report-49462>.

⁶³ See UN, *Transforming Our World: The 2030 Agenda for Sustainable Development* (2020) [hereinafter, *Knowledge Platform*], <https://sustainabledevelopment.un.org/post2015/transformingourworld/publication>.

Recognizing the social consequences of globalization, in 2015, the UN integrated the objectives and activities of participating international organizations through the 2030 Agenda for Sustainable Development (“2030 Agenda”). The 2030 Agenda is the “central platform” for the Sustainable Development Goals (SDGs),⁶⁴ which are 17 goals that cut across human, labor, and environmental standards.⁶⁵

To encourage coordination between the SDGs and the activities of international organizations mandated to regulate financial and economic development like the World Bank and the IMF, the 2030 Agenda and the Addis Ababa Action Agenda of the Third International Conference on Financing for Development (Addis Ababa Agenda)⁶⁶ cross-reference one another.⁶⁷ Recognizing “the interlinkages between the financing for development process and the means of implementation of the post-2015 development agenda,” the Addis Ababa Agenda emphasizes “proper and effective follow-up of the financing for development outcomes and the means of implementation of the [SDGs].”⁶⁸ To that end, the World Bank, the IMF, and other participating institutions pledged to channel their public investment into developing countries to support the interrelated Agendas.⁶⁹

The UN’s attempts within the SDGs to coalesce participating international organizations increased overlap across international organizations’ activities. For instance, relevant to the SDGs that focus on decent work, the World Bank’s development activities have begun to incorporate international labor rights.⁷⁰ The ILO’s assistance to governments now integrates labor-market policies often associated with macroeconomic development.⁷¹

Various fields of scholarship – including across law and the social sciences – examine the consequential overlap across organizations’ activities and offer different theoretical lenses through which to consider its implications. Those theories fail to appreciate governments’ immediate needs to receive complimentary international assistance, as explained below. They

⁶⁴ See UN, *Transforming our world: the 2030 Agenda for Sustainable Development*, (Sept 2020), http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E.

⁶⁵ See *Knowledge Platform*, *supra* note 63.

⁶⁶ See UNGA, 69/313 ADDIS ABABA ACTION AGENDA OF THE THIRD INTERNATIONAL CONFERENCE ON FINANCING FOR DEVELOPMENT (hereinafter, ADDIS ABABA ACTION AGENDA) (July 2015).

⁶⁷ See UN, *Transforming our world: the 2030 Agenda for Sustainable Development*, *supra* note X, at para. 40.

⁶⁸ See ADDIS ABABA ACTION AGENDA, note 66, paras. 130-131.

⁶⁹ See World Bank *Financing for Development at the World Bank Group* (July 2018).

⁷⁰ For a description of the World Bank’s efforts, see *infra* p. 22.

⁷¹ See Anne Trebilock, *The ILO as an Actor in International Economic Law: Looking Back, Gazing Ahead*, 10 EUR Y.B. INT’L ECON L. 3, 24-26 (2019).

also fail to acknowledge that the legal instruments of each of those organizations control their mandates, priorities, ideological approaches, and activities. Consequently, they too easily assume reconciliation and too quickly disregard the significant implications for governments and governance. Nevertheless, those works offer helpful insight into international organizations' institutional complexities and offer thoughtful long-term proposals far more sanguine than mine.

A. Previous Theories Behind Conflict

Legal scholars studying conflict across international organizations have increasingly begun to incorporate parallel social science studies.⁷² They accordingly explore the normative,⁷³ sociological,⁷⁴ and political implications for that conflict.⁷⁵ Adopting a bottom-up approach, those scholars consider how overlap and conflict develop,⁷⁶ how international organizations address conflict through informal networks of collaboration,⁷⁷ and the effect of overlapping activities on international law and the laws of Member States.⁷⁸

Much of that scholarship views overlap and conflict across international organizations as the logical consequence of an evolving ecosystem.⁷⁹ Some social science works dismiss concerns that discernible conflict causes *real* harm, arguing that those concerns overly rely on “snapshots” of international organizations' activities.⁸⁰ Conclusions drawn from such short-term impacts, they argue, are misleading. Governments may face conflicting norms for a “relatively short” period.⁸¹ Those conflicting norms might later settle and

⁷² See Jan Klabbers, & Guy Fiti Sinclair, *On Theorizing International Organizations Law: Editors' Introduction*, 31 EUR. J INT'L L 489-491 (2020).

⁷³ See Christian Kreuder-Sonnen & Michael Zürn, *After fragmentation: Norm collisions, interface conflicts, and conflict management*, 9 GLOBAL CONSTITUTIONALISM 242-243 (2020).

⁷⁴ See Kranke, *supra* note 2, at 1-2.

⁷⁵ See Bessma Momani & Mark Hibben. *Cooperation or Clashes on 19th Street? Theorizing and Assessing IMF and World Bank Collaboration*, 6 JIOS 28-29 (2015).

⁷⁶ See Kranke, *supra* note 2, at 1-2.

⁷⁷ *Id.*

⁷⁸ See Kreuder-Sonnen, et al., *supra* note 73, at 242-243.

⁷⁹ See, e.g., Jose E. Alvarez, *International Organizations: Then and Now*, 100 AM. J. INT'L L. 324, 338 (2006) (describing constructivist views of international organizations); Jutta Brunnée & Stephen J. Toope, *Persuasion and Enforcement: Explaining Compliance with International Law*, 2002 FINNISH Y.B. INT'L L. 273, 276.

⁸⁰ See Nico Krisch, Francesco Corradini, & Lucy Lu Reimers, *Order at the margins: The legal construction of interface conflicts over time*, 9 GLOBAL CONSTITUTIONALISM 343, 347 (2020).

⁸¹ *Id.*

conflate, enabling a dynamic and organic evolution of international and national laws and norms.⁸² Consequently, they argue, we must study the implications of overlap “from a historical distance” and not just during “phases of friction.”⁸³ Viewed correctly, overlapping activities could be benign or even beneficial.⁸⁴

Acknowledging the deeply-engrained ideological tensions between rights-based and economic international organizations, legal scholars concerned about social rights have pushed back against those claims.⁸⁵ Looking specifically at IMF and World Bank lending programs, which are backed by financial resources, scholars note the “significant implications” of the economic approaches of those organizations for the ILO’s labor rights.⁸⁶ While acknowledging that the IMF and World Bank’s economic programs may legitimately advance their objectives to foster growth and macroeconomic stability,⁸⁷ those scholars argue that those programs undermine the ILO’s rights. Franz Ebert points out, for instance, that the World Bank’s projects commit recipient governments to national legislation that could conflict with the ILO norms.⁸⁸ Ebert also notes the prevalence of consultations between the IMF and member governments on labor policies such as training policies, unemployment benefits, minimum wages, working hours, employment laws, severance payments, social safety nets, and collective-bargaining mechanisms.⁸⁹ He argues that “IMF members may see these recommendations as a statement of potential conditions they would have to fulfill in order to have access to the Fund’s financial resources.”⁹⁰ Ebert finds that “there is no evidence” that the IMF has ever consulted the

⁸² *Id.* at 348; Brunnée & Troope, *supra* note 79, at 276.

⁸³ *See* Krisch, et al., *supra* note 80, at 347.

⁸⁴ *See, e.g.,* Alvarez, *supra* note 79, at 338 (explaining the “institutional ethos” of evolving interactions of international organizations); *See, e.g.,* Krisch, et al., *supra* note 80, at 344 (arguing that organizational overlap “may in the long term be a pathway for change in an otherwise rigid structure of international law and contribute to the construction of relations between its different norms...”).

⁸⁵ *See, e.g.,* Trebilock, *supra* note 71, at 11-12; Ebert, *supra* note 12, at 105; Sungjoon Cho & Cesar F. Rosado Marzan, *Labor, Trade, and Populism: How ILO-WTO Collaboration Can Save the Global Economic Order*, 69 AM. U. L. REV. 1771, 1785-1790 (2020) (raising concerns with the failure of the World Trade Organization and the ILO to collaborate despite the overlap in trade and labor activities).

⁸⁶ *See* Ebert, *supra* note 12, at 106.

⁸⁷ *See* Blanton, et al., *supra* note 22, at 324–336 (finding that IMF and World Bank policies impact domestic labor policies).

⁸⁸ Franz Christian Ebert, *Labour Standards and the World Bank. Analysing the Potential of Safeguard Policies for Protecting Workers*, in *LABOUR STANDARDS IN INTERNATIONAL ECONOMIC LAW* 273, 285 (Springer 2018) (“The Bank’s ESS 2 can therefore not be considered a full ‘reflection’ of the ILO’s Core Labour Standards.”).

⁸⁹ *See* Ebert, *supra* note 12, at 114-15.

⁹⁰ *Id.* at 122.

ILO on labor law-related policies in formulating its labor-related conditions.⁹¹ Consequently, all of those overlapping policies may manifest and concretize in national laws and practices without regard to social effects.⁹²

Beyond the IMF and World Bank, rights scholars have also noted that overlap and divergence across economic and social policies arises in the trade context.⁹³ The World Trade Organization (WTO) oversees trade conditions under a neoliberal economic theory that supports the removal of trade restrictions.⁹⁴ Scholars and rights advocates have repetitively argued that the WTO's trade policies encroach on labor rights by encouraging firms to reduce production costs at the expense of rights protections.⁹⁵ They have consequently called on the WTO to link trade and labor rights.⁹⁶ Within the WTO, however, developed and developing member countries have failed to reach a consensus.⁹⁷ The WTO's trade rules, consequently, omit labor-rights protections and may actually restrict them.⁹⁸

⁹¹ *Id.* at 118.

⁹² *Id.*

⁹³ See, e.g., Cho & Marzan, *supra* note X, at 1783 (calling on the ILO and the WTO to craft joint norms governing global value chains).

⁹⁴ See Elaine Hartwick & Richard Peet, *Neoliberalism and Nature: The Case of the WTO*, 590 THE ANNALS OF THE AM. ACADEMY OF POL. & SO. SCI. 188, 191 (2003) ("The penultimate GATT trade negotiations, the Uruguay Round, lasting from 1986 to 1994, signified a new phase in world trading history within a new era of neoliberal globalization.").

⁹⁵ See, e.g., Robert Howse, *The World Trade Organization and the Protection of Workers' Rights*, 3 J. SMALL & EMERGING BUS. L. 131, 132-133 (1999) (describing the positions of free trade and rights advocates concerning the trade); Klye Bagwell & Robert W. Singer, *The WTO as a Mechanism for Securing Market Access and Property Rights: Implications for Global Labor and Environmental Issues*, 15 J. ECON. PERSP. 69, 69 (2001) (acknowledging the advocacy call for labor protections at the WTO); Yasmin Moorman, *Integration of ILO Core Rights Labor Standards into the WTO*, 339 Colum. J. Transnat'l L. 555, 557 (2000) (arguing that the WTO's process conflicts with the ILO's concepts of nondiscrimination to the detriment of international labor rights).

⁹⁶ The literature is replete in advocacy efforts to establish a formal "linkage" between trade and social standards in the WTO. For an apt description of the literature and debate, see Chantal Thomas, *Should the World Trade Organization Incorporate Labor and Environmental Standards?*, 61 WASH. & LEE L. REV. 347, 372-373 (2004). See also Simon Tay, *Trade and Labor*, in DEVELOPMENT, TRADE, AND THE WTO 463 (Bernard Hoekman, Aaditya, & Philip English, eds. 2002) (noting the "many suggestions" for the WTO to take up labor matters).

⁹⁷ See, e.g., WOLFGANG PLASA, RECONCILING INTERNATIONAL TRADE AND LABOR PROTECTION 20-24 (2015) (listing the failed efforts of governments such as the United States and within the European Union to place labor standards on the WTO agenda).

⁹⁸ See, e.g., Christopher McCrudden & Anne Davies, *A Perspective on Trade and Labor Rights*, J. INT'L ECON. L. 41, 52 (2000) (noting arguments that "some regulatory measures may have the effect of making it more difficult for market penetration to take place).

Although scholars may disagree on the implications of organizational overlap and conflict, they seem to coalesce around their firm belief that organizational conflicts may be reconciled.⁹⁹ For example, in their recent study, Christian Kreuder-Sonnen and Michael Zürn argue that we should focus less on institutional differentiation and more on the “(lacking) coordination between different norms, rules and authorities...”¹⁰⁰ That coordination may lead to cohesion by, for instance, clearly delineating responsibilities.¹⁰¹

The WTO example illustrates the weakness of that theory. Despite numerous, coordinated attempts to reconcile competing approaches to economic development and rights,¹⁰² the WTO is no closer to reaching a consensus between its developed and developing country members than it was decades ago. In 1996, the WTO held its First Ministerial Conference in Singapore.¹⁰³ During that Conference, the United States, with the support of many developed countries, favored WTO regulation of labor provisions. India, with the support of other leading developing countries, threatened to veto any such proposal.¹⁰⁴ Ultimately, the WTO Members agreed that the ILO should regulate and supervise labor standards, not the WTO. To that effect, the Ministerial Declaration issued at the end of the Singapore Conference stated:

We renew our commitment to the observance of internationally recognized core labor standards. The International Labor Organization (ILO) is the competent body to set and deal with these standards, and we affirm our support for its work in promoting them. We believe that economic growth and development fostered by increased trade and further trade liberalization contribute to the promotion of these standards. We reject the use of labor standards for protectionist purposes, and agree that the comparative advantage of countries, particularly low-wage developing countries, must in no way be put into question. In this regard, we note

Compare with Thomas, supra note 96, at 348 (arguing that the WTO’s judicial body has begun to shift away from “a deep suspicion about the propriety of linking trade with nontrade issues, and towards a nuanced view that accepts the validity of linkage as long as it meets certain formal parameters.”).

⁹⁹ See, e.g., ZÜRN, *supra* note 1, at 11 (“contestation can lead to institutional adaptation, re-legitimization, and a deepening of global governance.”); Ebert, *supra* note 12, at 129 (arguing that consultations across international organizations may resolve ideological conflict).

¹⁰⁰ See Kreuder-Sonnen, et al., *supra* note 73, at 243.

¹⁰¹ See Momani, et al., *supra* note 75, at 28-29; See Kranke, *supra* note 2, at 3.

¹⁰² See PLASA, *supra* note 97, at 20-24; Moorman, *supra* note 95, at 555 (noting the longstanding efforts of the United States to integrate international labor rights into the WTO).

¹⁰³ See Howse, *supra* note 95, at 166-167.

¹⁰⁴ See Kevin Kolben, *India’s Opposition to the Workers’ Rights Clause*, 13 IND. J. GLOB. ST. 225, 239 (2006) (describing India’s efforts during the 1996 Ministerial Conference).

that the WTO and ILO Secretariats will continue their existing collaboration.

The United States, which was embroiled in its own tensions between trade and labor standards at home,¹⁰⁵ again attempted to drive efforts to enjoin labor and trade standards within the WTO.¹⁰⁶ On December 1, 1999, during the Seattle Ministerial addressing the WTO members, President Clinton declared:

I believe the WTO must make sure that open trade does indeed lift living standards, respects core labor standards that are essential not only to worker rights, but to human rights. That's why this year the United States has proposed that the WTO create a working group on trade and labor.¹⁰⁷

During that Ministerial, the U.S. government proposed, unsuccessfully, that the WTO should “welcome a request by the ILO for observer status.”¹⁰⁸ The European Community (EC) echoed the need for the regulation of labor provisions. It offered an alternative proposal to form a joint WTO/ILO “standing working forum” that would examine labor issues. Like the previous labor discussions, the Seattle Ministerial ended in a stalemate.¹⁰⁹ Again, developed and developing countries could not reach a consensus on whether to include labor standards within the WTO framework.¹¹⁰

Since the Seattle Ministerial, WTO members have continued to disagree on whether the Organization should have a role in regulating labor standards in trade agreements. Most recently, for example, during informal meetings leading up to the Group of Seven (G7), France again proposed that the ILO be given observer status at the WTO.¹¹¹ That proposal did not receive sufficient support and, consequently, was not reflected in the G7 conclusions or comments. Unless and until governments reach a consensus within the WTO to align with the ILO’s rights-based approach, the default will remain segregation.

¹⁰⁵ See Clyde Summers, *The Battle in Seattle: Free Trade, Labor Rights, and Societal Values*, 22 U. PA. J. INT’L L. 61, 63-66 (2001) (describing the events taking place in the United States at that time, in particular concerning its efforts to negotiate labor provisions in its trade agreements).

¹⁰⁶ *Id.*

¹⁰⁷ *Clinton’s Plea: ‘Opening the Meetings,’* N.Y. Times, Dec. 1, 1999, at A1.

¹⁰⁸ The full text of the U.S. proposal appears at 16 INT’L TRADE REP. (BNA) 1806 (Nov. 3, 1999).

¹⁰⁹ See Summers, *supra* note 105, at 62-63.

¹¹⁰ *Id.*

¹¹¹ France’s proposal was not included in the official G7 documents, but was acknowledged during the subsequent high-level forum during the International Labor Conference entitled “Multilateralism for an equitable future of work.” See <https://www.ilo.org/ilc/ILCSessions/108/thematic-forums/multilateralism/lang--en/index.htm>.

As Jan Klabbers points out, a constitution's ends "can only justify the means if there is agreement on the end...."¹¹² If countries such as the United States and India cannot even agree to set up working groups across rights-based and economic international organizations, it is difficult to imagine how those organizations will reconcile tensions at the institutional level. Government members' failures to reconcile constitutional ends are not confined to the WTO context. Philip Alston and Mary Robinson chronicle other attempts by government members to incorporate social rights within the UN organizations.¹¹³ They find that, even when member governments uniformly demand better respect for rights, their respective organizations have not been "prepared to change their modus operandi."¹¹⁴ Those observations have proven similarly accurate within the IMF and World Bank contexts.¹¹⁵

To illustrate, the United States takes an active role as a member of the World Bank and the IMF.¹¹⁶ Through its project-financing process, the U.S. government tries to align economic and rights-based policies within those organizations.¹¹⁷ By Congressional mandate, the U.S. government screens all World Bank projects before it approves them.¹¹⁸ One of those screening objectives is to protect the internationally recognized worker rights of employees hired under the development projects.¹¹⁹ Through an interagency

¹¹² See KLABBERS, *supra* note 7, at 7.

¹¹³ Philip Alston & Mary Robinson, *The Challenge of Ensuring the Mutuality of Human Rights and Development Endeavours*, in HUMAN RIGHTS AND DEVELOPMENT 1-3 (Philip Alston & Mary Robinson, eds. 2009).

¹¹⁴ *Id.* at 2.

¹¹⁵ For a description of the United States' role in ensuring that the IMF and World Bank activities respect labor rights, see Desirée LeClercq, *A Rules-Based Approach to Jam's Restrictive Immunity: Implications for International Organizations*, 58 HOUS. L. REV. 55, 77-79 (2020).

¹¹⁶ *Id.* See also ZÜRN, *supra* note 1, at 113 (describing the United States' cooperation with the U.K. to set up the IMF and the World Bank).

¹¹⁷ See IFC, 2005 SUSTAINABILITY REPORT 14 (2005), https://www.scribd.com/fullscreen/16944917?access_key=key-1duzq2vi5a8mn4yookx3.

¹¹⁸ See S. REP. NO. 115-282, at 78-79 (2018). For a critique of the "scores of instructions" that Congress has enacted to direct Bank policy, see Kristina Daugirdas, *Congress Underestimated: The Case of the World Bank*, 107 AM J. INT'L L. 517, 519 (2013). Congress first introduced this statutory requirement in 1994, based on an amendment introduced by senators Bernie Sanders and Barney Frank. See BABB, *supra* note X, at 170.

¹¹⁹ See 22 U.S.C. §§ 262p-4p, 262o-2(a)(9). Previous appropriations bills have gone further and required the executive director to "evaluate borrowing member countries' recognition of internationally recognized worker rights, and to include the status of such rights as an integral part of the [international organization's] policy dialogue with each borrowing country." U.S. DEP'T OF THE TREASURY, FY2010 REPORT TO CONGRESS ON

process, the United States government confirms that the international organization such as the World Bank has accepted its affirmative requirements as *quid pro quo* to funding the development programs in question.¹²⁰ Despite those efforts, the World Bank continues to design and carry out its operations siloed from the ILO's processes and norms, to the detriment of legal consistency.

While scholars contentedly wait for the gradual percolation of cohesive norms, governments are facing conflicting commitments and advice concerning their labor and economic policies. Their choice between opposing commitments may require them to abdicate some international instruments (such as ILO conventions) in order to honor others (such as IMF conditionality-based loans).¹²¹ Those governments are already struggling to reconcile economic development and social rights, including in particular during the pandemic.¹²² They need immediate assistance from international authorities that they can trust.

Instead of theorizing how international organizations *should* reconcile their economic and rights-based approaches, we must first ask ourselves whether international organizations *could* reconcile their approaches in the first place. In the following section, I demonstrate that economic and rights-based approaches are based on controlling legal instruments. Because scholars fail to appreciate the legal nature of the conflict, they take reconciliation for granted. Their approach leaves governments without recourse and international organizations hoping for an evolution that will never happen organically.

B. Legal Institutional Theory

Legal instrumentalism explains and corrects the false assumptions that undergird scholarly theories conceptualizing organizational overlap. It is a pragmatic theory that emphasizes the primacy of achieving law's objectives over abstracting ideologies and principles under an *a priori* normative view.¹²³ It assumes that laws and rules form a "body of practical tools for serving substantive goals."¹²⁴ In the international organizations' context,

LABOR ISSUES AND THE INTERNATIONAL FINANCIAL INSTITUTIONS 3–4, 17 (2011), <https://www.treasury.gov/resource-center/international/development-banks/Documents/20110131%20FY2010%20Labor%20Report.pdf>.

¹²⁰ See S. REP. NO. 115-282, at 78–79 (2018).

¹²¹ See Ebert, *supra* note 12, at 122.

¹²² *Id.*

¹²³ See Robert S. Summers, *Pragmatic Instrumentalism in Twentieth Century American Legal Thought—A Synthesis and Critique of Our Dominant General Theory about Law and Its Use*, 66 CORNELL L. REV. 863 (1981)

¹²⁴ *Id.* at 864.

legal instruments – such as articles of agreements – inform their institutional ideologies, pathologies, operation methods, and policies.¹²⁵ Accordingly, when and where international organizations’ activities overlap, their legal instruments will shape and substantiate the nature of that overlap, the modus of the resolution, and the implications of that overlap for populations and member governments.¹²⁶

Constructivist legal scholars will likely accuse me of being “overly legalistic.”¹²⁷ Julian Arato, for instance, argues that the activities of international organizations are more fluid than their formal constitutions would suggest.¹²⁸ He contends that their activities instead reflect a “wide array of laws and customs...and others developed through legislation, judgment, convention or other practices...”.¹²⁹ I agree with Arato’s argument that, through their interpretive processes, international organizations are capable of evolving along the margins. Take, for example, the World Bank’s efforts to incorporate social protections in its lending programs. Nevertheless, as the COVID-19 activities demonstrate, and as elaborated upon below, that evolution only goes so far. It does not allow, nor is anyone suggesting that it allows, organizations to abdicate their constitutional objectives altogether.

The ILO, the IMF, and the World Bank’s different legal instruments are sufficiently distinct and opposing that total reconciliation would demand their abdication.¹³⁰ The IMF and World Bank’s legal instruments demand that they prioritize fiscal growth, often calling for governmental austerity, through prescriptive methodologies. The ILO’s legal instruments, by contrast, demand that it prioritize government support of fundamental labor rights through process-oriented methodologies.

The following sections describe the legal instruments behind the respective economic and labor approaches. Through that lens, the COVID-19 recovery activities were both necessary and predictable means of achieving their constitutional ends.

¹²⁵ This Article focuses on the constitutional instruments of international organizations. It nevertheless acknowledges that Members of international organizations may continue to adopt legal instruments that govern internal operations over time. *See, e.g., Alvarez, supra* note 79, at 327 (arguing that when international organizations have created so many international treaties that “states can no longer keep up with their respective reporting obligations, those organizations create an internal hierarchy of “core” obligations that did not exist at their founding).

¹²⁶ *See generally* KLABBERS, *supra* note 6, at 3 (explaining that the instruments of international organizations define their mandates as well as functions relevant to achieving that mandate).

¹²⁷ *See* Arato, *supra* note X, at 302-303.

¹²⁸ *Id.* at 302.

¹²⁹ *Id.*

¹³⁰ *See infra* pp. 22-27. *See also* KLABBERS, *supra* note 7, at 116 (discussing the innate difference in economic and rights-based mandates).

1. Legal Instruments behind the Economic Approach

According to its Articles of Agreement, the World Bank aims to provide financial assistance to countries through loans and the facilitation of capital investments.¹³¹ Within its overarching mandate to reduce poverty, the World Bank's Members adopted a World Bank Strategy that sets out its twin goals of ending extreme poverty and promoting shared prosperity in partner countries.¹³² Towards those goals, the World Bank's investment projects provide loans, grants, and guarantee financing to governments that ensure "social development and inclusion."¹³³ Its investment projects include policy guidance and technical support on, among other social policies, labor and working conditions.¹³⁴ Its targeted assistance enables "countries to design and implement labor regulations, income protection and active labor market programs" to create new jobs and increase employment rates.¹³⁵ The World Bank's activities also place a premium on the "rule of law," which focuses on the enforcement of extant laws in recipient countries.¹³⁶

In August 2016, the World Bank adopted an Environmental and Social Framework (ESF). The ESF contains ten Environmental and Social Standards (ESS) that set out conditions for borrowers when undertaking public sector projects that include international labor standards.¹³⁷ Under ESS2, borrowers must promote non-discrimination and prevent the use of all forms of forced and child labor. Borrowers must also "support the principles of freedom of association and collective bargaining...in a manner consistent with national law."¹³⁸

According to the World Bank, its COVID-19 recovery activities expressly "remain aligned with. . . the Twin Goals of eliminating extreme poverty and promoting shared prosperity in a sustainable manner."¹³⁹ It earmarked \$160USD billion in funds to assist governments in recovering

¹³¹ See WORLD BANK, *IBRD ARTICLES OF AGREEMENT* (2012).

¹³² See WORLD BANK, *THE WORLD BANK ENVIRONMENTAL AND SOCIAL FRAMEWORK* (2017) <https://www.worldbank.org>.

¹³³ *Id.*

¹³⁴ *Id.* at 31.

¹³⁵ See *World Bank, Labor Markets Overview*, (April 2018), <https://www.worldbank.org/en/topic/labormarkets>.8b.

¹³⁶ See World Bank, *Justice and Development* (2020), <https://www.worldbank.org/en/topic/governance/brief/justice-rights-and-public-safety>.

¹³⁷ See WORLD BANK, *THE WORLD BANK ENVIRONMENTAL AND SOCIAL FRAMEWORK*, *supra* note X.

¹³⁸ *Id.* at 31-36.

¹³⁹ See WORLD BANK, *SAVING LIVES, SCALING-UP IMPACT AND GETTING BACK ON TRACK WORLD BANK GROUP COVID-19 CRISIS RESPONSE APPROACH PAPER*, 12, para. 27 (June 2020).

from the pandemic's "health, economic and social shocks."¹⁴⁰ Its COVID-19 activities hold governments to their commitments to their extant labor laws, in keeping with its emphasis on the rule of law.¹⁴¹ Those activities, as explained in Part I, were inconsistent with the ILO's process-oriented rights activities.

Unlike the World Bank, the IMF's instruments do not authorize it to provide in-country projects, nor does its mandate extend to equity or social issues. Instead, its objective is to "promote international monetary cooperation" and "orderly exchange arrangements among members..."¹⁴² To do so, the IMF is mandated to monitor countries' economic and financial policies; to provide technical assistance and training to countries; and to provide members with financing.¹⁴³

For its part, the IMF has earmarked \$1USD trillion to support governments through COVID-19 dedicated lending arrangements.¹⁴⁴ Those funds, including its loan instruments, provide "vital emergency medical and other relief efforts while these members combat the impact of the pandemic."¹⁴⁵ Through its Catastrophe Containment and Relief Trust (CCRT), the IMF has also been offering immediate debt service relief to a limited number of countries¹⁴⁶ and has been augmenting its existing loan programs to accommodate evolving needs during the pandemic.¹⁴⁷

According to the IMF, its emergency lending measures "do not entail program-based conditionality or reviews."¹⁴⁸ Despite that assurance, the

¹⁴⁰ See World Bank, *World Bank Group's Operational Response to COVID-19 (coronavirus) – Projects List*, (Sept 2020), <https://www.worldbank.org/en/about/what-we-do/brief/world-bank-group-operational-response-covid-19-coronavirus-projects-list>.

¹⁴¹ Although the World Bank is committed to upholding the rule of law, there are disagreements within its institution as to the exact meaning of the rule of law and how the rule of law should manifest in its programs. For a detailed analysis of this phenomena, see Alvaro Santos, *The World Bank's Uses of the 'Rule of Law' Promise in Economic Development*, in *THE NEW LAW AND ECONOMIC DEVELOPMENT: A CRITICAL APPRAISAL* 266-277 (David M. Trubek & Alvaro Santos, eds 2006).

¹⁴² IMF, ARTICLES OF AGREEMENT (1944), <https://www.imf.org/external/pubs/ft/aa/pdf/aa.pdf>.

¹⁴³ See IMF, ABOUT THE IMF: OVERVIEW: HOW WE DO IT (2008) [hereinafter, ABOUT THE IMF], <https://www.imf.org/external/about/howwedo.htm>.

¹⁴⁴ See IMF, *Catastrophe Containment And Relief Trust—Approval Of Grant Assistance For Debt Service Relief*, (April 2020) <https://www.imf.org/en/Publications/Policy-Papers/Issues/2020/04/16/Catastrophe-Containment-And-Relief-Trust-Approval-Of-Grant-Assistance-For-Debt-Service-Relief-49330>

¹⁴⁵ *Id.*

¹⁴⁶ See also *How the IMF Can Help*, *supra* note X, at Y.

¹⁴⁷ *Id.*

¹⁴⁸ See IMF, *Transcript of IMF Press Briefing* (May 2020), <https://www.imf.org/en/News/Articles/2020/05/21/tr052120-transcript-of-imf-press->

IMF's COVID-19 recovery loans often expressly incorporated by reference the conditions and commitments that recipient governments made in pre-pandemic loan arrangements.¹⁴⁹ Those prior loans reflect the IMF's institutional objective to promote fiscal order by restricting public spending.¹⁵⁰ Where the IMF's COVID-19 loan arrangements authorized recipient governments to invest in public spending for labor-related policies, they also made clear that governments were to roll back that spending the moment conditions improved.¹⁵¹

The IMF's COVID-19 loan arrangements reflect its charter, which prioritizes public savings and fostering appealing investment climates in recipient countries. Like the World Bank's activities, the IMF's fiscal-driven activities conflicted with the ILO's rights-based and process-oriented activities. Those types of conflict are not new.

Well before the pandemic, scholars described instances in which the strict austerity measures imposed through conditionality were carried out at the expense of rights. Since in the 1980s, the IMF and the World have linked their financing to structural adjustment programs.¹⁵² Those programs often include labor-related austerity measures¹⁵³ implicating national laws and policies.¹⁵⁴ For instance, some programs require recipient governments to

[briefing](https://www.imf.org/en/About/Factsheets/Sheets/2020/02/28/how-the-imf-can-help-countries-address-the-economic-impact-of-coronavirus); IMF, *How the IMF Can Help Countries Address the Economic Impact of Coronavirus*, (May 2020) [hereinafter, *How the IMF Can Help*], <https://www.imf.org/en/About/Factsheets/Sheets/2020/02/28/how-the-imf-can-help-countries-address-the-economic-impact-of-coronavirus>.

¹⁴⁹ See *supra* pp. 9-10.

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² See Momani et al., *supra* note 75, at 29-32. See also IMF, ABOUT THE IMF, *supra* note X, at Y.

¹⁵³ See WORLD BANK, ANNUAL REPORT (1980); see also JAMES CYPHER & JAMES DIETZ, THE PROCESS OF ECONOMIC DEVELOPMENT 517 (2d ed. 2004).

¹⁵⁴ See Franz Christian Ebert, *Labour standards and the world bank. Analysing the potential of safeguard policies for protecting workers*, in LABOUR STANDARDS IN INTERNATIONAL ECONOMIC LAW 273-304 (Henner Gött, ed. 2018); Valentin Lang *The economics of the democratic deficit: The effect of IMF programs on inequality*, REV INT'L ORGS (2020); LeClercq, *supra* note 116, at 79-80; Mark Anner & Teri Caraway, *International institutions and workers' rights: Between labor standards and market flexibility*, 45 STUDIES IN COMP INTERN'L DEV. 151, 161-164 (2010).

adopt labor-market flexibility measures,¹⁵⁵ which the IMF and World Bank view are necessary for domestic economic growth.¹⁵⁶

The IMF and World Bank's requisite labor-market measures have had immediate impacts in countries. For instance, labor advocates have linked those measures to higher discrimination levels, lower unionization rates,¹⁵⁷ income inequality and relatively lower wages,¹⁵⁸ and unemployment.¹⁵⁹ The labor-market policies also grant employers broader authority to hire and fire employees, determine working hours, and relax restrictions on temporary labor contract.¹⁶⁰ Failure to satisfy the terms of the IMF and World Bank's conditionality has led to economic and fiscal discipline, including the cut-off of loan disbursements and even the failure "to receive loans elsewhere."¹⁶¹

¹⁵⁵ The term "labor market flexibility" is a broad term that refers to various internal and external policies. Internal flexibility refers to flexibility in the production process, in payment and location of workers, and in hiring and firing. External flexibility involves the labor market across regions, sectors, and wages. See Janine Berg and David Kucera, *Labour Institutions in the Developing World: Historical and Theoretical Perspectives*, in IN DEFENCE OF LABOUR MARKET INSTITUTIONS 9, 22-23 (ILO 2008).

¹⁵⁶ See Blanton, et al., *supra* note 22, at 326.

¹⁵⁷ See Nathan D. Martin & David Brody, *Workers of the Less Developed World Unite? A Multi-Level Analysis of Unionization in Less Developed Countries*, 72 AM. SOCIO. REV. 562-84 (2007).

¹⁵⁸ See Blanton, et al., *supra* note 22, at 325 (and citations therein).

¹⁵⁹ See, e.g., BOB HEPPLER, *LABOUR LAWS AND GLOBAL TRADE* 17-18 (2005); Yossi Dahan, Hanna Lerner & Faina Milman-Sivan, *Shared Responsibility and the International Labour Organization*, 34 MICH. J. INT'L L. 675, 683 (2012) (arguing that "exploitation of workers in the global labor market occurs on an institutional level, namely, in existing regulations of the global economy that have been determined by global institutions (for example, the International Monetary Fund, World Bank, and World Trade Organization (WTO)) or through intergovernmental agreements."); ARTURO ESCOBAR, *ENCOUNTERING DEVELOPMENT: THE MAKING AND UNMAKING OF THE THIRD World* 39-40 (2d ed. 2012) (describing the discourse of development, whereby modernization took priority over social, cultural, and political elements); RUMU SARKAR, *INTERNATIONAL DEVELOPMENT LAW: RULE OF LAW, HUMAN RIGHTS, & GLOBAL FINANCE* 276 (2009) ("[t]he human cost of adjustment policies could be measured in terms of sharply increased unemployment levels, reductions in real wages, and drastically reduced social services to the most vulnerable segments of the population..."); PIA RIGGIROZZI, *ADVANCING GOVERNANCE IN THE SOUTH: WHAT ROLES FOR INTERNATIONAL FINANCIAL INSTITUTIONS IN DEVELOPING STATES?* 155 (Timothy Shaw ed., 2009) ("despite successfully tackling problems of hyperinflation and economic stabilization, externally led neoliberal reforms impacted negatively on state-society relations and . . . created vulnerabilities and insecurity particularly among low-income groups, which suffered the most from the costs of economic recession and high rates of unemployment.").

¹⁶⁰ *Id.* See also Bernhard Reinsberg; Thomas Stubbs; Alexander Kentikelenis; & Lawrence King, *The Political Economy of Labor Market Deregulation During IMF Interventions*, 45 INT'L INTERACTIONS 532, 533 (2019).

¹⁶¹ See Anner & Caraway, *supra* note 155, at 160 ("Not only can they cut off loan

Put broadly, rights scholars have heavily criticized the IMF and World Bank's economic approach for being at odds with "worker rights *writ large*."¹⁶² Rather than considering social rights, the economic approach views labor within the framework of "the effects of unions and labor standards on economic outcomes."¹⁶³ Describing that approach, Mark Anner and Teri Caraway note the distaste for trade union monopolies, high wages, and high public spending, all of which are policies encouraged by rights-based organizations such as the ILO.¹⁶⁴ Against this backdrop, the IMF and World Bank's COVID-19 activities referencing austerity and concretizing substandard labor legislation¹⁶⁵ are not surprising.

2. Legal Instruments behind the Rights-Based Approach

As the UN agency mandated to develop, promote, and supervise international labor standards, the ILO's constitutional objectives vary significantly from those of the World Bank and the IMF. Declaring that "labor is not a commodity," the ILO's Constitution commits it to work with other "international bodies" to "promote the economic advancement and social advancement" of less developed countries.¹⁶⁶ Its policies aim to encourage its member countries to ratify and effectively implement the international labor rights considered fundamental to decent work and living.¹⁶⁷

Concerning economic policy, the ILO urges developing countries "to find ways to stabilize and gradually formalise, rather than to flexibilize, destabilise and informalize their labour markets further in order to climb higher up the development ladder."¹⁶⁸ Conceding that traditional economists view international labor standards "as being costly and therefore hindering economic development," the ILO stresses nevertheless that its system of standards "is often accompanied by improvements in productivity and economic performance."¹⁶⁹

The ILO's mandate also provides it with a distinct operation method. As opposed to the prescriptive methods of the IMF and the World Bank, the

disbursements, but their disapproval often results in the failure of developing countries to receive loans elsewhere.").

¹⁶² See Blanton, et al., *supra* note 22, at 325-327 (arguing that IMF and World Bank policy conditions "create negative consequences for collective labor rights.") (emph. added).

¹⁶³ *Id.*

¹⁶⁴ See Anner & Caraway, *supra* note 155, at 158.

¹⁶⁵ See *supra* Part I.B-C.

¹⁶⁶ See ILO CONST. (as amended 1974).

¹⁶⁷ See RULES OF THE GAME, *supra* note 25, at 25.

¹⁶⁸ See ILO, ECONOMIC AND LABOUR MARKET ANALYSIS DEPARTMENT (EMP/ELM) (EMP/ELM) (2013), <https://www.ilo.org/empelm/lang--en/index.htm>.

¹⁶⁹ See RULES OF THE GAME, *supra* note 25, at 14.

ILO's constitution requires it to formulate its activities and standards through a tripartite, consultative process.¹⁷⁰ In that sense, it must construct its policy recommendations and assistance to its government Members only after consulting with the national representatives of employers and workers.¹⁷¹

The ILO's Constitution also sets out its supervisory system, an intricate machinery composed of cyclical reporting, dialogue, and technical assistance.¹⁷² If a government ratifies an ILO convention and fails to implement it in law and/or practice, the ILO's Committee of Experts on the Application of Conventions and Recommendations (CEACR) issues a public report outlining the ILO's concerns. The Committee on the Application of Standards (CAS) at the ILO's annual Labor Conference may then examine those reports.¹⁷³ The ILO's reports feed into its technical assistance by flagging issues and legislation of concern, ensuring that its in-country programs are coherent with its broader labor governance.¹⁷⁴

The ILO's rights-based COVID-19 recovery measures reflect its institutional design. Its activities consist primarily of technical assistance and advice through consultations and programs.¹⁷⁵ Those activities vary depending on request¹⁷⁶ and range from drafting labor legislation (through consultations with the governments and national representatives of workers and employers¹⁷⁷), providing labor-market advice on COVID-19 recovery, and consulting on wages and employment benefits to ensure that recovery efforts are compatible with the ILO's international labor standards.¹⁷⁸

The ILO's COVID-19 recovery activities furthered its constitutional ends but, accordingly, conflicted with the IMF and World Bank's activities. Those activities emphasized public spending and progressive legislative measures through national consultations. Its process-oriented methodologies, on top of

¹⁷⁰ See, e.g., ILO CONST., art. 7 (stipulating that the ILO's Governing Body is made up of members of government and representatives of employers and workers); RULES OF THE GAME *supra* note 25, at 14 ("The ILO's unique tripartite structure ensures that these standards are backed by governments, employers and workers alike.").

¹⁷¹ RULES OF THE GAME *supra* note 25, at 14; Teri L. Caraway, Stephanie J. Rickard, & Mark S. Anner. *International negotiations and domestic politics: The case of IMF labor market conditionality*, 27–61 INT'L ORG. (2012)..

¹⁷² See ILO CONST, arts. 22-30; RULES OF THE GAME, *supra* note 25, at 105.

¹⁷³ See RULES OF THE GAME, *supra* note 25, at 106-107.

¹⁷⁴ See ILO, *Technical assistance and training*, <https://www.ilo.org/global/standards/applying-and-promoting-international-labour-standards/technical-assistance-and-training/lang--en/index.htm>.

¹⁷⁵ Only those activities that were publicly listed on the ILO's COVID-19 dedicated website were included in this Article.

¹⁷⁶ See, e.g. ILO, *Inclusive Labour Markets, Labour Relations and Working Conditions Branch* (Sept. 2020), <https://www.ilo.org/travail/lang--en/index.htm>.

¹⁷⁷ See, e.g., ILO, ILO STANDARDS AND COVID-19 (CORONAVIRUS) FAQ (2020).

¹⁷⁸ *Id.* at 10.

substance, conflicted with the prescriptive methods of the IMF and the World Bank.

C. Implications for Governance

The implications of inter-organizational conflict are significant, particularly for the government members that will bear the costs of incoherence. At best, incoherent activities may confuse recovery priorities and policies. Should labor laws be flexible to accommodate governments' needs while protecting rights, or should they remain static? Should governments invest in long-term public projects or restrict public spending to enable longer-term fiscal recovery?

Whichever path they chose, governments will prioritize some organizational approaches to the detriment of others.¹⁷⁹ More significant, however, governments will face conflicting requirements and commitments. In some instances, such as with the incompatible IMF and ILO activities, governments are forced to violate their commitments to one organization in order to satisfy their commitments to the other organization. Developing countries pressed for resources may be more likely prioritize commitments linked to financing over those linked to technical assistance. This latter consequence does not bode well for the ILO's rights-based objectives.

The conflict between economic and rights-based activities will also have significant implications for developed countries such as the United States. As mentioned, the United States prefaces its financial contributions to organizations on the condition that economic policies align with rights-based policies.¹⁸⁰ Although the United States attempts to leverage its voting power to reconcile economic and social rights at the IMF and World Bank, its ability to impact broader programming and in-country activities has not proven adequate to effectuate meaningful change.¹⁸¹

In addition to immediately impacting governments, the innate conflict across overlapping international organizations is perilous for global governance more broadly. For instance, governments frustrated with the internal processes and policies of international organizations may simply form new organizations that better reflect their ideals and priorities.¹⁸² The

¹⁷⁹ See ZÜRN, *supra* note 1, at 13 (describing the connection between contestation and delegitimization of international organizations).

¹⁸⁰ See *supra* pp. 18-19.

¹⁸¹ *Id.*

¹⁸² See Mariana Mota Prado & Steven J. Hoffman, *The promises and perils of international institutional bypass: defining a new concept and its policy implications for global governance*, 10 *TRANSN'T'L LEG. THEORY* 275, 276 (2019) ("Just like surgeons grafting new pathways around blocked arteries in coronary bypasses, global governors are

resulting proliferation in international organizations with common objectives contributes to further overlap and competition,¹⁸³ thus furthering the decentralization and delegitimization of global governance.¹⁸⁴ In the trade context, governments have simply given up on the international organizations' platform, opting instead to govern social rights in trade through their bilateral and multilateral trade arrangements.¹⁸⁵ The imposition, interpretation, and enforcement of rights within those unilateral efforts raise additional concerns of compatibility and coherence.¹⁸⁶

Governments and the broader system of global governance do not have time to wait for competing norms across overlapping international organizations to evolve organically. Developing countries need immediate resources and coherent advice. Developed countries are increasingly demanding cohesion across economic and rights policies. International organizations are viewed less as epistemic authorities and more like ineffective competitors. The international system requires immediate solutions.

Conflict that is attributable to distinctive legal instruments will be more difficult to remedy than issue- or organization-specific conflict, however.¹⁸⁷ International organizations will have to do more than cooperate with one another. They will either need to reconcile incompatibilities within their legal

increasingly responding to clogged international institutions by creating new ones that work..."); Tyler Pratt, *Angling for Influence: Institutional Proliferation in Development Banking*, INT'L STUD. QUART. 1, 1-2 (2020) (noting that the number of international organizations have increased from less than 100 in 1950 to over 300 in 2000); KLABBERS, *supra* note 7, at 10 (arguing that some recent international organizations amount to nothing more than "interest groups, defending and promoting the interests of their member states.").

¹⁸³ See Prado & Hoffman, *supra* note 183, at 276; see also KLABBERS, *supra* note 7, at 7 (attributing the difficulty in identifying the true number of proliferating international organizations due to the fact that there is no longer "agreement on what actually constitutes an international organization.").

¹⁸⁴ See Pratt, *supra* note 183, at 1-2 (describing the competition, reduced legitimacy and redundancy associated with the proliferation of international organizations).

¹⁸⁵ For a description of the prevalence labor rights in trade agreements, see Jordi Agustí-Panareda, Franz Christian Ebert & Desirée LeClercq, *ILO Labor Standards and Trade Agreements: A Case for Consistency*, 36 COMP. LAB. L. & POL'Y J. 347, 354-355 (2015).

¹⁸⁶ *Id.* at 361-367 (describing the potential incoherence between the labor rights incorporated in trade agreements and the ILO's system of labor rights); SHAW, *supra* note 4, at 47 (noting the fear that "the rise of specialized rules and mechanisms that have no clear authority" may lead to "inconsistency in the interpretation and development of international law.").

¹⁸⁷ See Klaus Dingwerth, Antonia Witt, Ina Lehmann, Ellen Reichel, & Tobias Weise, *Introduction*, in INTERNATIONAL ORGANIZATION UNDER PRESSURE: LEGITIMATING GLOBAL GOVERNANCE IN CHALLENGING TIMES 1 (Klaus Dingwerth, Antonia Witt, Ina Lehmann, Ellen Reichel, & Tobias Weise, eds. 2019) ("Like any organization, the [World] Bank cannot imply press the reset button and reinvent itself. Instead, it is constrained by the identity it has acquired up until today.").

instruments – what promises to be a lengthy if not improbable process¹⁸⁸ – or find short-term solutions that enable their respective institutions to foster solutions on a more narrow basis. The next Part describes my proposal for the latter.

III. CALL FOR NARROW COORDINATION

The ILO, the IMF, and the World Bank answer to different legal instruments. They have different priorities, different approaches, and, consequently, different in-country activities. Scholars examining overlapping activities and conflict propose various platforms for institutional-level coordination under the assumption that economic and rights-based institutional mandates and approaches are reconcilable.¹⁸⁹ That assumption has proven wrong. As evidence, I describe previous unsuccessful efforts across economic and rights-based organizations to coordinate on an institutional basis. I offer a more modest proposal for a mandatory mechanism of *ex-ante* coordination. That proposal that would require the staff members of international organizations to resolve project-level conflicts while avoiding the bigger constitutional questions.

A. *The Failure of Institutional Coordination*

The scholarly theories examining organizational overlap presuppose that institutional approaches and normative values are fluid. Those scholars will likely disagree with my legal institutionalist approach given its rigidity in law and impatience with construction. My intention is not to suggest that evolution within institutional practices, norms, and conceptions is impossible. Nevertheless, to the extent it occurs, evolution happens gradually and incrementally. Previous efforts to reconcile economic and rights-based approaches on a grander scale have not prompted evolution; they have prompted a stalemate.

The ILO, the IMF, and the World Bank leaders have acknowledged the potential for conflict across overlapping activities and have attempted to reconcile their conflict on an institutional basis.¹⁹⁰ Owing to the close relationship between the IMF Managing Director and the ILO Director-

¹⁸⁸ See KLABBERS, *supra* note 7, at 116 (describing aspirations to harmonize rights-based and economic approaches as “a pipe dream, as it presupposes the sort of shared prosperity theory of justice which, in a pluralist and divided world, is lacking.”).

¹⁸⁹ See, e.g., Ebert, *supra* note 12, at 129 (advocating for inter-organizations consultation when more than one international organization’s “normative *acquis*” is at issue).

¹⁹⁰ See Anner & Caraway, *supra* note 155, at 162-163; IMF, INDEPENDENT EVALUATION OFFICE OF THE INTERNATIONAL MONETARY FUND, THE IMF AND SOCIAL PROTECTION 33 (2017) [hereinafter, THE IMF AND SOCIAL PROTECTION]

General in the 1990s, for example, the IMF agreed to endorse the ILO's fundamental labor rights, pledged to defer to the ILO's expertise on labor standards, and granted the ILO observer status at its annual meetings.¹⁹¹ Since 1999, the ILO has likewise enjoyed observer status at the IMF/World Bank Development Committees.¹⁹² That collaboration, conceptually, bolsters scholarly theories of internal evolution and reconciliation.

To the disappointment of many,¹⁹³ that institutional collaboration has not aged well. As observed by Francis Maupain, the former ILO legal advisor, the IMF and ILO agreement dissolved during the debt crisis in Europe.¹⁹⁴ To assist their members to recover economically, the IMF reverted back to austerity at the expense of social rights, thereby confirming “the fragility” of the process.¹⁹⁵ The World Bank's efforts to resolve tensions with the ILO's approach have also proven ineffective.¹⁹⁶ Even though the World Bank's ESS2 projects reference labor standards, as described earlier, that institutional step has not resolved economic and labor rights tensions.¹⁹⁷ In fact, the ILO and World Bank recently brought their lingering ideological tensions into the public light. In 2018, the World Bank used its *World Development Report* to caution governments against adopting strict labor protections.¹⁹⁸ The ILO quickly responded, rebuking the World Bank's “analysis and policy solutions” and accusing it of “fall[ing] short of a comprehensive approach to reducing inequality....”¹⁹⁹

¹⁹¹ See Anner & Caraway, *supra* note 155, at 162-163.

¹⁹² *Id.*

¹⁹³ See, e.g., Hannah Murphy, *The World Bank and core labour standards: Between flexibility and regulation*, 21 REV. INT'L POL. ECON. 399, 400 (“Most critically for the [ILO], trade unions and pro-labour governments, the work of the Bank over the past 20 years has at best undermined, at worst directly contradicted, the ILO's mandate and activities in promoting government regulation of labour markets in accordance with its conventions.”); Suzan Kang, *Labor and the Bank: Investigating the Politics of the World Bank's Employing Workers' Index*, CUNY ACADEMIC WORKS 484 (2010) (“The World Bank has dealt with and responded to criticisms about its labor-related practices from organized labor, the ILO, and civil society for several decades.”) (and citations therein), at

https://academicworks.cuny.edu/cgi/viewcontent.cgi?article=1204&context=jj_pubs.

¹⁹⁴ See FRANCIS MAUPAIN, *THE FUTURE OF THE INTERNATIONAL LABOUR ORGANIZATION IN THE GLOBAL ECONOMY* 101 (2013).

¹⁹⁵ *Id.*

¹⁹⁶ See Ebert, *supra* note 12, at 122.

¹⁹⁷ See *supra* Part II.B.

¹⁹⁸ See WORLD BANK, *WORLD DEVELOPMENT REPORT 2019: THE CHANGING NATURE OF WORK* 4, 10 (2019),

<http://documents.worldbank.org/curated/en/816281518818814423/pdf/2019-WDR-Report.pdf>.

¹⁹⁹ See *International Labour Office Expresses Concern About World Bank report on future of work*, at https://www.ilo.org/global/about-the-ilo/newsroom/statements-and-speeches/WCMS_646884/lang--en/index.htm (visited June 10, 2020).

Furthermore, while the World Bank moves to incorporate social rights into its economic approach, it also risks conflicting with the IMF's activities, which have not adopted social policies.²⁰⁰ A 2020 IMF Independent Auditing Report notes that the IMF and the World Bank are increasingly working on the same issue areas.²⁰¹ The IMF and World Bank are consequently searching for ways to reconcile their approaches, including proposals to clearly delineate responsibilities to reduce overlap.²⁰²

B. An Alternative: Project-Level Coordination

Rather than attempt to reconcile their legal instruments on an institutional basis, international organizations should take a more modest approach. They should negotiate on a country-level basis before implementing their activities. This *ex-ante* coordination would require organizations to resolve their disagreements at the project level before presenting governments with incompatible directives. That project-level coordination will help resolve differing approaches – or at least ensure awareness of potential conflict – without requiring international organizations to resolve their institutional divergences. This section explains the elements, potential benefits, and potential drawbacks.

First, international organizations participating in the UN system have committed to implementing the SDGs.²⁰³ Within the SGD penumbra, those organizations should agree to implement project-level coordination as a mandatory requirement for their staff members. The mandatory nature of the coordination would ensure consultations particularly over thorny issues that would be easier to ignore.

Second, international organizations must specify that those inter-organizations consultations take place during the design stage, *ex-ante*, when organizations objectives and deliverables are conceptualized. This requirement will pose challenges for process-oriented organizations such as the ILO that design their programs in consultation with the recipient governments. Nevertheless, the ILO's tripartite membership should welcome an extra layer of consultations that would ensure coherence in assistance and commitments in their countries.

Third, the coordination objectives will center on awareness raising and

²⁰⁰ See Momani, et al., *supra* note 75; Kranke, *supra* note 2, at 1-3; THE IMF AND SOCIAL PROTECTION, *supra* note 191, at 1.

²⁰¹ See IMF, INDEPENDENT EVALUATION OFFICE OF THE INTERNATIONAL MONETARY FUND, IMF COLLABORATION WITH THE WORLD BANK ON MACRO-STRUCTURAL ISSUES 1 (2020).

²⁰² *Id.*

²⁰³ See *supra* pp. 13-14.

not on outcome. Drawing from the ILO's consultation processes, that objective will not "require negotiations leading to an agreement."²⁰⁴ Instead, the key will be for international organizations to consider "the views of those concerned...before decisions are taken."²⁰⁵

The COVID-19 activities described in Part I offer examples of how this *ex-ante* coordination could have helped the international organizations avoid inconsistency and incompatibility. First, had the ILO and World Bank staffers coordinated on the ESS2 language included in their overlapping COVID-19 activities in the Maldives and Georgia,²⁰⁶ the World Bank could have agreed on the appropriate laws and standards to include in the ESS2 towards its shared objectives to promote economic recovery while respecting labor standards. Second, in the CAF,²⁰⁷ the World Bank and the IMF could also have agreed on the exact scope and extent of public-sector spending to include within the scope of IMF conditionality. Third, had the IMF and ILO coordinated on their COVID-19 activities in the CAF, they could have explored ways to ensure that labor legislation attracted corporate investments while protecting workers. For instance, labor protections are often linked to industrial stability and reduced strike activity, which in turn are linked to a more attractive investment climate.²⁰⁸

My proposal aims to advance coordination along policy lines but I recognize that it faces a number of potential drawbacks. At the outset, the proposal requires that the respective organizations' leadership agree to implement the *ex-ante* coordination mechanism. That agreement may not come easily, given that the mechanism entails a mandatory process of potentially contentious discussions to the detriment of constitutional objectives. The ILO and the World Bank just publicly demonstrated the animosity that can arise over ideological differences on the leadership level. Continuing to operate in a silo may be easier, and at times, ignorance may be bliss.

Even if the leaders agree to the mechanism, their staff members must still make good-faith efforts to be both transparent and open to concession. That may be difficult for staff who are committed to the constitutional mandates of their respective organizations, Finally, while many tensions across

²⁰⁴ ILO, PROMOTE TRIPARTITE CONSULTATION: RATIFY AND APPLY CONVENTION NO. 144, 6 (2011),

https://www.ilo.org/ifpdial/information-resources/publications/WCMS_159700/lang-en/index.htm.

²⁰⁵ *Id.*

²⁰⁶ For a discussion of those overlapping activities, *see supra* p. 9.

²⁰⁷ For a discussion of those overlapping activities, *see supra* p. 11.

²⁰⁸ *See generally* George S. Pultz, *Multinational Regulation of MNE Labor Relations*, 4 B.C. INT'L & COMP. L. REV. 409, 419-420 (1981) (discussing efforts of multinational enterprises to attract investments by imposing codes of conduct regulating labor relations).

economic development and rights may be resolvable on a narrow basis, many may not be. A persistent failure to achieve desired results may deter future cooperation.

Although these drawbacks would undoubtedly arise in various contexts, international organizations may still agree to the mechanism as a whole. Recall that member governments of international organizations drive institutional policies and decisions.²⁰⁹ Those are the very governments that stand to benefit from collaboration, either as developing countries facing inconsistent and incoherent activities or as developed countries seeking to reconcile economic and rights-based policies. Finally, the interconnectivity of economic and labor policies has rendered independent programming inefficient, at best. Member governments would want to see their organizations succeed on an institutional level.²¹⁰

By sitting down at the table, even if staff representatives are unable to reach consensus, their activities will, in the very least, be informed and deliberate. Although the respective legal instruments of economic and rights-based international organizations mandate different approaches, they do not *require* conflict. That is, the IMF and World Bank's legal instruments do not explicitly require the derogation of rights, nor does the ILO's constitution require governments to invest in costly welfare projects. There are grey areas between the mandated economic and rights approaches. Those areas may be identified and exploited, but only if there is an opportunity for negotiation.

C. Existing Coordination Platform

Assuming that international organizations agree to adopt a mandatory, *ex-ante* coordination process, the UN system already offers a platform within the context of the SDGs. The United Nations Department of Economic and Social Affairs (UNDESA) oversees the implementation of the 2030 Agenda and provides substantive support and capacity building to achieve the SDGs.²¹¹ The UN harmonizes its development activities within its umbrella United Nations Country Teams (UNCTs), which exist in over 136 countries and include inputs from participating international organizations.²¹²

²⁰⁹ For a description of the internal organs of international organizations and their mandate to take binding and non-binding decisions concerning the scope and powers of their organizations, see Inger Österdahl, *International Organizations – Institutions and Organs in RESEARCH HANDBOOK ON THE LAW OF INTERNATIONAL ORGANIZATIONS* 174-182 (Jan Klabbers & Asa Wallendahl eds. 2011).

²¹⁰ See Herr & Chia, *supra* note 2, at 11–25.

²¹¹ See UN System Chief Executives Board for Coordination: Country Teams (March 23, 2017), <https://www.unsystem.org/content/country-teams>.

²¹² See UN, *Country Teams*, (Feb. 2020) <https://www.unsystem.org/content/country-teams>.

The UNCT prompts inter-agency coordination and decision making at the national level. Through the UNCTs, the UN requests international organizations to “plan and work together. . . to ensure the delivery of tangible results in support of the development agenda of the Government.”²¹³ The Resident Coordinator (RC) leads the current UNCT process.²¹⁴

Although the UN General Assembly designed the RC position to ensure inter-organizational coordination, survey results from RCs soon revealed frustration over their “ad hoc” relationships with organizations such as the World Bank and the IMF.²¹⁵ The RC was accordingly unable to integrate coordination,²¹⁶ an omission reflected in the COVID-19 activities. While many of the ILO’s COVID-19 activities referenced participation within the UNCT framework, the World Bank and IMF projects did not. The voluntary nature of coordination has proven inadequate to bring economic-based international organizations to the table. My proposal would remedy this gap by requiring participation.

In January 2019, the UN attempted to strengthen the RC’s role and authority within the framework of the 2030 Agenda.²¹⁷ Noting that the process received “unanimous support from Member States,”²¹⁸ the UN nevertheless concedes that the reform’s success will be measured through dimensions such as the coherence of policy support and “the discipline of the UN system to act and support countries as one. . . .”²¹⁹

If the yardstick for RC reform is the support of countries “as one,” based on the COVID-19 activities, the UN’s recent efforts have fallen short. The UN system should use its moment for reform to ensure that participation is mandatory, *ex ante*, and on an in-country project basis.²²⁰ That its recent

²¹³ *Id.*

²¹⁴ See UN, *The UN Resident Coordinator system-an overview* (Nov. 2020) <https://undg.org/wp->

²¹⁵ See UN, DESA SURVEY OF RESIDENT COORDINATORS 2017 DEVELOPMENT COOPERATION POLICY BRANCH DEPARTMENT OF ECONOMIC AND SOCIAL AFFAIRS UNITED NATIONS. UNITED NATIONS DEPARTMENT OF ECONOMIC AND SOCIAL AFFAIRS 50 (Feb. 2017 Draft).

²¹⁶ See S.P. Campbell & A.T. Kaspersen. *The UN’s Reforms: Confronting Integration Barriers*. 15 INT’L PEACEKEEPING 470, 475 (2008) (“Integration reforms have largely fallen short of their efficiency aims because they have failed to establish incentives and mechanisms to encourage UN agencies to share resources and invest in collaborative efforts.”).

²¹⁷ See UN, *UN development system reform 101 | United to Reform* (Dec. 2018) <https://reform.un.org/content/un-development-system-reform-101>

²¹⁸ *Id.*

²¹⁹ *Id.*

²²⁰ *Compare with* MANAGEMENT AND ACCOUNTABILITY OF THE UN DEVELOPMENT SYSTEM AND RESIDENT COORDINATOR SYSTEM, Sec. 2.2 (“The UNCT *can* also include

effort enjoyed such momentous support from government members speaks well for additional strengthening efforts.

There remain many international organizations, and thus organizational activities, that are beyond the UN system purview. Therefore, it would be critical for the UN system to envision how to map out and consult international organizations' programmatic activities on the ground to ensure comprehensive coordination. Of course, identifying all relevant international organizations and then enticing their participation may not be possible. Nevertheless, even if participation were limited to the international organizations participating in the UN system, the resulting coordination would beat the alternative.

CONCLUSION

The implications of overlap and ideological conflict across international organizations are far-reaching. International organizations are imposing incompatible commitments and policies on member governments struggling to recover from the pandemic. This incompatibility hinders global governance more broadly. It also introduces uncertainty and competing expertise just when governments need coordination.

As they say, never waste a good crisis. In his early work on institutional linkages, Oran Young argues that “incompatible arrangements” of overlapping institutions “can lead to the development of unusually effective international regimes by stimulating efforts to think in whole-ecosystems terms and to devise integrated management practices.”²²¹ His optimism may hold true today, both within the immediate COVID-19 context and the broader context of global governance. The pandemic has drawn awareness to the interdependence of labor and economic policies. It has also presented the global system with the urgent need to institutionalize mandatory yet realistic coordination. That coordination will benefit its members and the broader governance system, ensuring more robust responses to global needs in the future.

representatives of the wider UN system, for example, the Bretton Woods institutions.”) (emph. added) (ed. 1-26 April 2019), <https://unsdg.un.org/sites/default/files/UNDS-MAF-2019-country-level-component-FINAL-editorial-rev-26APR.pdf>.

²²¹ See Young, *supra* note 2, at 1,7.