

# WHY CONFLICT BETWEEN INTERNATIONAL ECONOMIC AND RIGHTS-BASED GOVERNANCE IS INEVITABLE

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## ABSTRACT

*International organizations mandated to govern social rights are colliding with international organizations mandated to govern economic development. While disagreeing over the nature of overlap 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 international organizations render conflict inevitable and unification more challenging than commonly believed. By closely examining the pandemic-related activities carried out by the International Labor Organization (ILO), the World Bank, and the International Monetary Fund (IMF) in the same forty-one 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 negotiate over conflicting policies while respecting their diverse mandates and government constituencies.*

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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 rights and economic development to provide cohesive advice and policies.<sup>1</sup> 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 that govern economic development and those that govern social

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1. See Michael Zürn, *A Theory of Global Governance* 52-53 (2018) (describing the manner in which 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.

rights, particularly when their activities overlap.<sup>2</sup> International organizations have always been fragmented; their member governments designed them that way.<sup>3</sup> They have distinct legal instruments—agreements or constitutions—that define their objectives, priorities, and approaches.<sup>4</sup> These legal instruments, much like the US Constitution,<sup>5</sup> are not easily amended.<sup>6</sup> Their terms, conditions, and ideological underpinnings significantly control their activities.<sup>7</sup> Therefore, when discharging their unique legal instruments, it is natural that those organizations tend not to perform in unison.<sup>8</sup> The more significant yet underexplored issues concern the implications of overlap and conflict for governments, vulnerable populations, and global governance.

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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 Richard Herr & Edmund Chia, *The Concept of Regime Overlap: Towards Identification and Assessment*, in *Overlapping Maritime Regimes: An Initial Reconnaissance* 18 (B W Davis ed. 1995); see generally 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 *Glob. 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, *ADVANCED INTRODUCTION TO 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 XV* (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 fragmented<sup>9</sup> global governance.<sup>10</sup> They point out, for example, the notoriously conflicting economic policies advanced by the World Bank<sup>11</sup> 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.<sup>12</sup> Although those organizations all participate within the United Nations (UN) system's penumbra and have committed to the UN's Sustainable Development Goals (SDGs),<sup>13</sup> their policies and activities continue to diverge. The resulting fragmentation pits economic policies against rights policies, requiring governments to choose between international authorities and associated resources.<sup>14</sup>

The multidimensional nature of the COVID-19 pandemic provides rich material against which to weigh scholarly theories of overlap and conflict. The national lockdowns and business closures to "flatten the curve" impacted over 81 percent of the global workforce's 3.3 billion people,<sup>15</sup> resulting in the "most severe

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

10. See, e.g., ZÜRN, *supra* note 3, 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 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."); 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,

[https://timeline.worldbank.org/themes/timeline/pdfs/web/viewer.html?file=/timeline.worldbank.org/sites/timeline/files/timeline/archival-pdfs/event12\\_UNagt\\_summary\\_30151250.pdf](https://timeline.worldbank.org/themes/timeline/pdfs/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* Part II.

14. Compare with Tamar Megiddo, *Beyond Fragmentation: On International Law's Integrationist Forces*, 44 YALE J. INT'L L. 115, 116 (2019) (arguing that States mitigate the harmful effects of fragmentation in international law by "reconcil[ing] their various international legal obligations without forsaking their domestic agendas").

15. 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](https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/briefingnote/wcms_740877.pdf) [hereinafter, ILO Second Monitor]. 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).

crisis since the Second World War.”<sup>16</sup> The loss of jobs and factory closures stalled the production of goods along supply chains,<sup>17</sup> slowing global economic growth to a projected 3 percent—a far worse rate than during the 2008-09 economic crisis.<sup>18</sup> In a vicious cycle, employment losses drove down national economies, further contributing to “devastating impacts on employment.”<sup>19</sup>

More than ever, labor and economic recoveries have needed to converge to combat the multidimensional nature of the crisis. If the ILO, the World Bank, and the IMF hoped to assist their government members in recovering, their respective activities must have coalesced quickly and meaningfully.<sup>20</sup> Despite the urgency and importance, however, their respective activities remained siloed and, at times, conflicted with one another.

This Article is both comparative and normative. In Part I, I compare the COVID-19 recovery activities of the ILO, the IMF, and the World Bank in the same countries at the same time. I focus on those organizations, given their longstanding tensions and specific scholarly attention. Two principal 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 the legitimacy<sup>21</sup> of the international organizations?

After describing several cases of incoherence and incompatibility across COVID-19 recovery activities, Part II turns to my normative claim. Current scholarship presupposes that overlap and conflict between international

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16. See ILO Second Monitor, *supra* note 15, at 3. See also IMF, WORLD ECONOMIC OUTLOOK v (April 2020) at xii (“[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>.

17. See ILO Monitor: COVID-19 and the world of work 2 (1st. ed., March 18, 2020), [https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/briefingnote/wcms\\_738753.pdf](https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/briefingnote/wcms_738753.pdf) [hereinafter, ILO First Monitor]; GLOBAL ECONOMIC PROSPECTS, *supra* note 16, at 143.

18. See WORLD ECONOMIC OUTLOOK, *supra* note 16, at xiv.

19. See UN Policy Brief: The World of Work and COVID-19, 13 (June 2020), [https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/genericdocument/wcms\\_748428.pdf](https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/genericdocument/wcms_748428.pdf).

20. *Id.*

21. 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 Contests: A Theoretical Framework*, in INTERNATIONAL ORGANIZATION UNDER PRESSURE: LEGITIMATING GLOBAL GOVERNANCE IN CHALLENGING TIMES 31 (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.

organizations' activities are temporary, benign, or otherwise naturally reconcilable.<sup>22</sup> That scholarship under-appreciates the inevitable gridlock between economic and rights-based policies and over-appreciates the constructive process of evolving norms.<sup>23</sup> Drawing from the legal charters of the ILO, World Bank, and IMF, I argue that the respective rights-based and economic approaches of those international organizations will inevitably conflict. That inevitability has significant implications for governments, which must prioritize competing international obligations. It also has significant implications for vulnerable populations such as workers who depend on public resources and legislative protections. Finally, inevitable conflict implicates global governance more broadly, which already faces a legitimacy crisis.

In Part III, I propose a modest solution that reconciles tensions, or at least raises institutional awareness of organizational overlap. Specifically, using a pre-existing UN platform, international organizations should require their staff to discuss in-country projects during the design stage (*ex-ante*). That project-level coordination would allow organizations to negotiate their diverse approaches on a narrow (and thus resolvable) basis before imposing conflicting obligations and priorities on governments.

## I. COVID-19 ACTIVITIES

Scholars are fascinated by the fragmentation of international organizations.<sup>24</sup> Some of that fascination centers on tensions between economic and rights-based governance.<sup>25</sup> For example, governments in developing countries have a vested

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22. See, e.g., Benjamin Faude & Julia Fuss, *Coordination or conflict? The causes and consequences of institutional overlap in a disaggregated world order*, 9 GLOB. CONSTITUTIONALISM 268, 285 (2020) (arguing that institutional overlap can lead to coordination); Nico Krisch, Francesco Corradini & Lucy Lu Reimers, *Order at the margins: The legal construction of interface conflicts over time*, 9 GLOB. CONSTITUTIONALISM 343, 347 (2020) (arguing that institutional “conflicts [are] part of social processes that define the relation between different norms over time”).

23. See *infra*, Part II.

24. See Megiddo, *supra* note 14, at 115-16 (noting that the question of fragmentation “has been haunting international law scholars for the past two decades”). As Megiddo notes, scholars have traditionally struggled to define fragmentation and have used the term to apply to “such a vast array of phenomena that all of international law’s development in the past century seems enveloped in it.” *Id.* at 118 (citing Anne Peters, *Fragmentation and Constitutionalism*, in THE OXFORD HANDBOOK OF THE THEORY OF INTERNATIONAL LAW 1011, 1012 (Anne Orford, Florian Hoffmann & Martin Clark eds., 2016)). This Article uses the term fragmentation to denote the different (although not necessarily harmful or incompatible) processes, commitments, and norms adopted across international organizations within the same sub-fields or subject matters. Through that lens, this Article examines the impact of fragmentation on member States.

25. 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, 324-25 (2010) (describing concerns among labor advocates that the World Bank and IMF’s economic policies will be carried out to the detriment of rights).

interest in attracting economic resources,<sup>26</sup> and economic-based international organizations such as the IMF and the World Bank provide those resources.<sup>27</sup> However, 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.<sup>28</sup> When the policies of the respective organizations differ, governments, particularly those in developing countries, may be more likely to follow the approach linked to tangible economic resources to the detriment of rights.

Although the international system is fragmented, it also overlaps. Various international organizations—inadvertently or not—tend to work on cross-cutting policy areas.<sup>29</sup> Scholars examining economic and rights-based international organizations have, until now, been unable to identify direct overlap between those organizations in the same country at the same time.<sup>30</sup>

For example, a government may request the ILO's advice and assistance while considering whether to ratify an ILO convention<sup>31</sup> or respond to the ILO supervisory bodies' comments and recommendations.<sup>32</sup> Those same governments may seek financial resources from the IMF<sup>33</sup> or investment loans from the World Bank.<sup>34</sup> Nevertheless, those requests, and the related 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

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

27. *Id.*

28. 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).

29. For an explanation of why that overlap may be taking place across economic and social policy areas, see *infra* Part II.

30. 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).

31. See ILO, ILC 95th Sess., Rep. VI, The Role of the ILO in technical cooperation, para. 27 (2016) (describing ILO assistance “to assist in ratification”), <https://www.ilo.org/public/english/standards/reim/ilc/ilc95/pdf/rep-vi.pdf>.

32. See RULES OF THE GAME, *supra* note 28, at 109 (describing ILO technical assistance including follow up to the supervisory bodies' comments).

33. See IMF, *IMF Lending* (noting that “The IMF's various lending instruments are tailored to different types of balance of payments need as well as the specific circumstances of its diverse membership”), <https://www.imf.org/en/About/Factsheets/IMF-Lending>.

34. See World Bank, *Financing* (describing various World Bank financing programs available to governments), <https://www.worldbank.org/en/what-we-do/products-and-services/financing-instruments>.

nature requires multidimensional recovery efforts.<sup>35</sup> The ILO, the World Bank, and the IMF maintain websites dedicated to COVID-19 to ensure transparency regarding their contributions.<sup>36</sup> Those websites act as portals of information concerning their recovery objectives and in-country activities, thus enabling an examination that identifies the direct overlap between those organizations in the same country at the same time.

From January<sup>37</sup> to June 2020, the ILO, the IMF, and the World Bank initiated simultaneous COVID-19 recovery activities in the same forty-one countries.<sup>38</sup> Those recovery activities overlapped across 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 were either inconsistent or incompatible.

#### A. Complementary Labor-Related Policies

First, the good news. All of the overlapping forty-one COVID-19 recovery activities that implicated national OSH policies were complementary. The World Bank's COVID-19 programs all expressly aimed to "strengthen national systems for public health preparedness" in beneficiary countries.<sup>39</sup> Similarly, the ILO's COVID-19 projects provided resources and technical guidance to governments concerning OSH practices and resources.<sup>40</sup> In their activities, the ILO and the

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35. See *supra* Introduction.

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

37. 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.

38. 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.

39. See World Bank, *Saving Lives, Scaling-up Impact and Getting Back on Track* World Bank Group COVID-19 Crisis Response Approach Paper, 17, para. 38 (June 2020).

40. See ILO COVID website, *supra* note 36.



World Bank both incorporated the guidelines established by the World Health Organization (WHO).<sup>41</sup>

To illustrate, in Bangladesh, the World Bank's COVID-19 project provided resources such as personal protective equipment (PPE) and provided guidance to health workers on the WHO's OSH procedures.<sup>42</sup> While the World Bank's project targeted the healthcare sector, the ILO collaborated with the WHO to design and translate COVID-19 workplace guidance throughout the country and provide OSH assistance for local garment factories.<sup>43</sup> This complementarity also took place in Yemen, where the ILO distributed medical kits for "both apprentices and master crafts persons,"<sup>44</sup> while the World Bank provided OSH resources and materials to the healthcare industry.<sup>45</sup> These activities were not duplicative but instead reinforced and strengthened 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 were inconsistent. By "inconsistent," I mean that their COVID-19 activities targeted the same labor-related policy but applied different legal standards. I carried out this examination at the projects' nascent stages. At this point, it was premature to determine whether those policies would be benign or incompatible; nevertheless, there was 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. Through its supervisory machinery and COVID-19 activities, the ILO advises governments on ways they might align their national laws with international labor standards.<sup>46</sup> However, the World Bank's recovery projects included sustainable development

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41. See *id.*; World Bank COVID website, *supra* note 36.

42. See World Bank, Bangladesh: COVID-19 Emergency Response and Pandemic 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>.

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

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

45. 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>.

46. See, e.g., ILO, ILO Standards and COVID-19 (coronavirus) FAQ (2020).

commitments<sup>47</sup> that required governments to comply with those same national labor laws in twelve<sup>48</sup> out of the World Bank's forty-one projects. The ILO's advice may have resulted in no changes or changes that did not impact the World Bank's project. It is equally possible that the ILO may have incentivized progressive legislative amendments, which could then have conflicted with the commitments contained in the World Bank's projects. In any event, the different objectives of those projects show a lack of coordination at the design stage. Two examples of these inconsistent activities are provided below.

In the Maldives, the World Bank's COVID-19 project contained a sustainable development commitment ensuring compliance with the government's laws, regulations, and ratification of the ILO's fundamental conventions.<sup>49</sup> 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.<sup>50</sup> If the government ends up revising 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 committed the government to respect the existing national labor code.<sup>51</sup> Simultaneously, the ILO's COVID-19 project aimed to revise that same labor code to align with the ILO's norms.<sup>52</sup> Once again, if the government ends up amending its labor code in response to the ILO's efforts, the World Bank's incorporation of the outdated labor code may raise substantive questions, and vice versa.

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47. 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* Part II.B.1.

48. Egypt, Ethiopia, Ghana, Georgia, Jordan, Kenya, the Kyrgyz Republic, Liberia, Maldives, Rwanda, Tajikistan, and Uzbekistan.

49. See World Bank, Maldives COVID-19 Emergency Response and Health Systems Preparedness Project 6 (Mar. 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>.

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

51. See World Bank, Appraisal Environmental and Social Review Summary Appraisal Stage – Georgia, 10 (Apr., 2020),

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

52. 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>.

*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 could not implement the policy mandated in one organization's activity without violating the commitment or disregarding the recommendation within the framework of another organization's activity. I include both commitments and recommendations because I intend to show the destabilizing impact of incompatible activities on national priorities and policies, not necessarily to show legal or financial penalties for noncompliance. Those incompatible activities arose most frequently between the COVID-19 activities of the ILO and the IMF, but also arose between some ILO and World Bank activities.

Twenty-one<sup>53</sup> of the IMF's COVID-19 loan arrangements encouraged increased public spending to recover from the pandemic upon the condition that the government revert to the IMF's traditional structural and fiscal policies "as soon as" or "once" the pandemic passed. Thirteen<sup>54</sup> of its arrangements, by contrast, explicitly called for immediate reductions not only in wages, but also in worktime programs and employment benefits, while calling for increases in taxes. Furthermore, contrary to the IMF's assurances,<sup>55</sup> the IMF's COVID-19 arrangements frequently incorporated the recipient governments' pre-pandemic commitments. Ten<sup>56</sup> of those arrangements incorporated commitments that implicated 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) of a \$38 million loan, which the IMF Executive Board approved.<sup>57</sup> In its staff report, the IMF listed the specific reasons for recommending the approval of the CAF's request.<sup>58</sup> Among those reasons, the IMF emphasized that: "The authorities must continue implementing the policies and structural reforms to which they committed under the ECF arrangement."<sup>59</sup> The IMF's "ECF arrangement," in turn, referred to its three-year arrangement

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53. 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, and Uzbekistan.

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

55. *See infra* Part II.B.1.

56. Bosnia & Herzegovina, Cabo Verde, Cent. Afr. Rep., Dem. Rep. Congo, Ethiopia, Georgia, Honduras, Liberia, Malawi, Rwanda, Senegal, Sierra Leone, São Tomé and Príncipe, Tunisia.

57. *See* IMF, *Request for Disbursement Under the Rapid Credit Facility – Central African Republic*. International Monetary Fund African Dept. (Apr., 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>.

58. *Id.*

59. *Id.* at p.10, para. 27.

under the Extended Credit Facility.<sup>60</sup> That arrangement, which the IMF Executive Board approved for \$115.1 million on December 20, 2020, called for several specific structural reforms.<sup>61</sup> Those reforms included amending the labor code to “improve the business environment” by capping fines for labor violations<sup>62</sup> and “strengthening” the tax on wages by removing previously granted exceptions to the income tax.<sup>63</sup>

While the IMF’s COVID-19 activities in the CAF invoked pre- or extra-pandemic lending conditionality, the ILO and World Bank COVID-19 activities in that country aimed to protect workers. The World Bank’s COVID-19 project focused on strengthening the capacity and conditions of civil servants’ work.<sup>64</sup> The ILO’s project specifically focused on strengthening the capacity of national workers to adjust to the work-related impacts of COVID-19 under existing labor laws.<sup>65</sup> At the same time, the ILO’s supervisory bodies were advising the CAF government to base its COVID-19 response on policies on “tripartite consultations and social dialogue.”<sup>66</sup>

If the CAF government had raised income taxes and amended its labor code to grant employers greater latitude to violate labor standards, as promised, it would have undermined the ILO’s attempts to improve labor protections and terms and conditions of work under current legislation. Doing so would also have foreclosed tripartite consultations and social dialogue. Finally, by reforming its labor code accordingly, the CAF government could have undermined the World Bank’s COVID-19 project, so long as the IMF’s efforts to curb public spending and raise income taxes in the country affected civil servants.

The CAF case was not extraordinary. In Senegal, for instance, the IMF’s COVID-19 arrangement stressed that “macroeconomic policies continue to be guided by the objectives of the [current arrangement] to the extent possible.”<sup>67</sup>

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60. 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>.

61. *Id.*

62. *Id.* at 16, para. 28.

63. *Id.* at 14, para. 18.

64. See World Bank, *Appraisal Environmental and Social Review Summary Appraisal Stage – Central African Republic*, at pp. 7-8 (Apr., 2020).

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

66. The ILO submitted its request to the CAF under the ILO’s Tripartite Consultation Convention, which the CAF has ratified. See ILO, ILC, 109th Sess. *Direct Request. Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) – Central African Republic* (2021).

67. See IMF, *Senegal: Request for Disbursement Under the Rapid Credit Facility and Purchase Under the Rapid Financing Instrument*, 2 (Apr., 2020),

Notably, one of those policies included relaxing “rigid” labor regulations to strengthen the private-sector climate.<sup>68</sup> Meanwhile, the ILO’s COVID-19 project included advising the Senegalese government on implementing existing labor regulations through dialogue with workers.<sup>69</sup> Under the ILO’s Freedom of Association Convention, which the Senegalese government has ratified, the ILO’s supervisory bodies were urging the government to amend its labor regulations to strengthen the rights and protections afforded to workers in joining and forming unions.<sup>70</sup> Like the CAF case, if the Senegalese government were to relax (and thus weaken) its labor protections as demanded by the IMF, it could not simultaneously adopt stronger labor protections through social dialogue as requested by the ILO.

There were additional incompatibilities between the IMF and the ILO’s COVID-19 activities concerning wages and employment benefits. For instance, in Djibouti, the ILO worked with the Ministry of Labor and the workers’ and employers’ associations to mitigate the impact of COVID-19 on the national labor market and social protection scheme.<sup>71</sup> Meanwhile, the IMF’s COVID-19 loan arrangement required the Djiboutian government to reduce the “costs of production,” including labor costs.<sup>72</sup> Those activities were incompatible. The Djiboutian government could not have cooperated with the ILO and its social partners to enhance workers’ terms and conditions of employment while weakening the terms and conditions of employment for the IMF.

In Jordan, the ILO worked with the Ministry of Labor and the Ministry of Social Development to mitigate the negative impacts of the pandemic on employment benefits.<sup>73</sup> This assistance included technical advice on social security protection.<sup>74</sup> Simultaneously, the IMF awarded the Jordanian government emergency financial assistance because the government took immediate measures

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<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>.

68. See IMF, *Senegal: Request for a Three-Year Policy Coordination Instrument* (Jan. 2020), at 9 <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>.

69. See ILO, *Country Policy Responses: Senegal* (June 2020),

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

70. See ILO, ILC, 109th Sess. Observation. *Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) – Senegal* (2021).

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

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

72. See IMF, *Djibouti: Requests for Disbursement Under the Rapid Credit Facility and Debt Relief Under the Catastrophe Containment and Relief Trust* (May 2020), at 10 <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>.

73. See ILO, *Country Policy Responses: Jordan* (May 2020),

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

74. *Id.*

to “maintain macroeconomic stability” that included a “temporary reduction in social security contributions.”<sup>75</sup> Like the example above, the government could not have cooperated with the ILO to strengthen social security protection while simultaneously reducing social security contributions as stipulated in the IMF award.

In these incompatible cases, recall that the IMF’s COVID-19 activities were linked to immediate financial assistance while the ILO’s activities were linked to advice and capacity building. Governments in developing countries faced severe economic constraints and hardships during the pandemic. They would reasonably have been more attracted to the IMF’s activities than the ILO’s activities. Although those financial resources benefit national economies and societies, they do not benefit vulnerable workers. The latter were central to the ILO’s activities and were suffering from the labor and employment shocks of the pandemic.

## II.

### THE EXPLANATIONS FOR OVERLAP AND CONFLICT

The COVID-19 pandemic provides a unique opportunity to compare overlapping efforts and policies across international organizations and within recipient governments. It also exposes the conflicting approaches of the ILO, the IMF, and the World Bank. The ILO, which takes a rights-based approach, offers its members assistance to enable governments to formulate labor and economic policies.<sup>76</sup> The ILO’s activities are process-oriented, meaning the ILO bases its advice and assistance on consultations with the government and local stakeholders.<sup>77</sup> The IMF and the World Bank, by contrast, take an economic approach and offer governments financial resources based on prescribed policies.<sup>78</sup> Some of those policies reduce public spending for labor policies or concretize existing labor law commitments.<sup>79</sup> The contrast between these respective approaches is significant.

Although the pandemic synthesized the timing of those international organizations’ activities, the UN’s previous initiatives to align economic and social rights had already facilitated their substantive overlap.<sup>80</sup> Recognizing the social consequences of globalization, in 2015, the UN integrated the objectives

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75. See IMF, *Jordan: Request for Purchase Under the Rapid Financing Instrument*, 10, para. 19 (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>.

76. See *infra*, Part II.B.2.

77. *Id.*

78. See *infra*, Part I.B.1.

79. *Id.*

80. See UN, *Transforming Our World: The 2030 Agenda for Sustainable Development* (2020) [hereinafter, Knowledge Platform],

<https://sustainabledevelopment.un.org/post2015/transformingourworld/publication>.

and activities of participating international organizations through the 2030 Agenda for Sustainable Development (2030 Agenda).<sup>81</sup> The 2030 Agenda is the “central platform” for the Sustainable Development Goals (SDGs),<sup>82</sup> which are seventeen goals that cut across human, labor, and environmental standards.<sup>83</sup>

To encourage coordination between economic and rights-based international organizations, the 2030 Agenda and the Addis Ababa Action Agenda of the Third International Conference on Financing for Development (Addis Ababa Agenda)<sup>84</sup> cross-reference one another.<sup>85</sup> 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 all the means of implementation of the [SDGs].”<sup>86</sup> To that end, the World Bank, the IMF, and other participating institutions pledged to channel their public investments into developing countries.<sup>87</sup>

The SDGs increased overlap across international organizations’ activities. For instance, relevant to the SDGs that focus on decent work,<sup>88</sup> the World Bank’s development activities have begun to incorporate international labor rights.<sup>89</sup> For its part, the ILO’s assistance to governments now integrates labor-market policies often associated with macroeconomic development.<sup>90</sup>

Various fields of scholarship—including law and the social sciences—examine the consequential overlap in the organizations’ activities and offer different theories to consider its implications. Those theories fail to appreciate governments’ immediate needs to receive complimentary international assistance, as explained below. They also fail to acknowledge that the legal instruments of each of those organizations frame the mandates, priorities, ideological

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81. See UN resolution adopted by the General Assembly on 25 September 2015 Transforming our world: the 2030 Agenda for Sustainable Development, A/Res/70/1 (2015), <https://sustainabledevelopment.un.org/post2015/transformingourworld> (accessed Oct. 31, 2021) [hereinafter, “UN SDGs”].

82. 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](http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E).

83. See *Knowledge Platform*, *supra* note 80.

84. See UNGA, 69/313 Addis Ababa Action Agenda of the Third International Conference on Financing for Development (hereinafter, Addis Ababa Action Agenda) (July 2015), <https://sustainabledevelopment.un.org/frameworks/addisababaactionagenda>.

85. See UN, Transforming our world: the 2030 Agenda for Sustainable Development, *supra* note 64, at para. 40.

86. See ADDIS ABABA ACTION AGENDA, note 66, paras. 130-31.

87. See World Bank, Financing for Development at the World Bank Group (July 2018).

88. See, e.g., UN SDGs, *supra* note 81 (“Goal 8. Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all”).

89. For a description of the World Bank’s efforts, see *infra* Part II.B.1.

90. See Anne Trebilcock, 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).

approaches, and activities of international organizations. Consequently, the theories too easily assume reconciliation and too quickly disregard significant implications for governments and governance. All the same, those works offer helpful insight into international organizations' institutional complexities and offer thoughtful, long-term proposals that are nevertheless far more sanguine than my own.

#### A. *Previous Theories Behind Overlap and Conflict*

Legal scholars are increasingly applying a social science lens<sup>91</sup> to understand overlap and conflict across international organizations. They do so by examining both the phenomena and the fragmented international legal regime's normative,<sup>92</sup> sociological,<sup>93</sup> and political implications.<sup>94</sup> Adopting a bottom-up approach, those scholars consider how overlap and conflict develop,<sup>95</sup> how international organizations address conflict through informal networks of collaboration,<sup>96</sup> and the effects of overlapping activities on both international law and the laws of organizations' member States.<sup>97</sup> They nevertheless disagree on the causes and effects of overlap and conflict, as described below.

##### 1. *Theoretical Causes of Overlap and Conflict*

Although scholars seem to agree that fragmentation may lead to overlap and conflict, they disagree on the causes of that fragmentation. Some scholars argue that because international organizations are State-made entities, fragmentation across regimes is inherently "State-driven."<sup>98</sup> Fragmentation may consequently reflect a principal-agent relationship under which powerful State principals deliberately "protect their dominance and discretion by creating a system that only they have the capacity to alter."<sup>99</sup> If and when a specific legal system fails to work

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91. See Jan Klabbers & Guy Fiti Sinclair, *On Theorizing International Organizations Law: Editors' Introduction*, 31 EUR. J. INT'L L. 489, 489-91 (2020).

92. See Christian Kreuder-Sonnen & Michael Zürn, *After fragmentation: Norm collisions, interface conflicts, and conflict management*, 9 GLOB. CONSTITUTIONALISM 241, 242-43 (2020).

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

94. See Bessma Momani & Mark Hibben, *Cooperation or Clashes on 19th Street? Theorizing and Assessing IMF and World Bank Collaboration*, 6 JIOS 27, 28-29 (2015).

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

96. See *id.*

97. See Kreuder-Sonnen & Zürn, *supra* note 92, at 242-43.

98. Megiddo, *supra* note 14, at 120.

99. *Id.* (quoting Eyal Benvenisti & George W. Downs, *The Empire's New Clothes: Political Economy and the Fragmentation of International Law*, 60 Stan. L. Rev. 595, 625 (2007)); see also Gisela Hirschmann, *International organizations' responses to member state contestation: from inertia to resilience*, 97 Int'l Aff. 1963, 1965 (2021) (discussing the "principal-agent approach, according to which [international organizations], as the agents of their member States, make efforts to satisfy the principals' demands").



in their favor, those States may simply “abandon or threaten to abandon” it.<sup>100</sup> Other scholars counter that fragmentation is not so deliberate but rather is the result of disorganized national processes. That theory considers that different domestic authorities within States (agencies and ministries) handle different issues and simply fail to communicate with one another.<sup>101</sup>

Other scholars, including in legal and social science domains, view overlap and conflict across international organizations as a logical consequence of an evolving ecosystem.<sup>102</sup> In that respect, legal pluralism within international law may simply reflect the proliferation of organizations and tribunals against the backdrop of an increasingly diverse global society.<sup>103</sup>

## 2. *Theoretical Effects of Overlap and Conflict*

In addition to disagreeing on the cause of overlap and conflict, scholars also disagree on their effects.<sup>104</sup> Some scholars dismiss concerns that discernible conflict causes *actual* harm, arguing that those concerns overly rely on “snapshots” of international organizations’ activities.<sup>105</sup> Conclusions drawn from short-term impacts, they argue, are misleading.<sup>106</sup> Governments may face conflicting norms for a “relatively short” period.<sup>107</sup> However, those conflicting norms might later settle and conflate, enabling a dynamic and organic evolution of international and national laws and norms.<sup>108</sup> Consequently, we must study the implications of overlap “from a historical distance” and not just during “phases of friction.”<sup>109</sup>

Many scholars further argue that organizational conflicts, to the extent they exist, may be reconciled.<sup>110</sup> For example, in their recent study, Christian Kreuder-

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100. See Megiddo, *supra* note 14, at 122.

101. *Id.* at 120.

102. See, e.g., José 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*, 13 FINNISH Y.B. INT’L L. 273, 276-78 (2002) (same).

103. Megiddo, *supra* note 14, at 120.

104. *Id.* at 121.

105. See Nico Krisch et al., *supra* note 22, at 347.

106. *Id.*

107. *Id.*

108. *Id.* at 348; Jutta Brunnée & Stephen J. Toope, *Persuasion and Enforcement: Explaining Compliance with International Law*, 2002 FINNISH Y.B. INT’L L. 273, 276-79 (2002); Megiddo, *supra* note 14, at 116 (arguing that fragmentation benefits the international legal order because States faced with conflicting norms will “build bridges between international law’s various legal regimes and promote integration between them”).

109. See Krisch et al., *supra* note 22, at 347-48.

110. See, e.g., ZÜRICH, *supra* note 1, at 11 (“contestations can lead to institutional adaptation, re-legitimization, and a deepening of global governance”); Ebert, *supra* note 12, at 128-29 (arguing that consultations across international organizations may resolve ideological conflict).

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.”<sup>111</sup> That coordination may lead to cohesion by creating, for instance, clearly delineated responsibilities.<sup>112</sup>

This scholarship coalesces around the assumption that, when viewed correctly, overlapping activities across international organizations are benign or even beneficial.<sup>113</sup> Echoing the principal-agent theory, Tamar Megiddo suggests that governments faced with overlapping or even conflicting guidance from international legal bodies may actually “adopt a proactive, creative approach to try to reconcile their various obligations.”<sup>114</sup> Those governments will be “incentivized by the different regimes to find common ground between their commitments in order to plan and execute policies that are compatible with all of their obligations.”<sup>115</sup>

### 3. *Weakness in Theories*

This Article does not adjudicate the above theories of overlap and conflict. It is sufficient to note that many of those theories are optimistic, perhaps unrealistically so. They assume innate benefits to governments and eventual normative cohesion and consequently neglect the deeply ingrained ideological tensions between economic and rights-based international organizations. In reality, despite the active efforts of the UN and even member governments to prompt coherence, the IMF and World Bank’s programs continue to advance their institutional objectives to foster economic growth. Those programs undermine the ILO’s rights-based programs that advocate for labor protections at the expense of public savings.<sup>116</sup>

Franz Ebert traces these residual tensions, pointing out that the World Bank’s projects commit recipient governments to national legislation that could conflict with ILO norms.<sup>117</sup> Ebert also notes the prevalence of consultations between the

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111. See Kreuder-Sonnen & Zürn, *supra* note 92, at 243.

112. See Momani & Hibben, *supra* note 94, at 28-29; See Kranke, *supra* note 2, at 3.

113. See, e.g., Alvarez, *supra* note 102, at 338-339 (explaining the “institutional ethos” of evolving interactions of international organizations); See, e.g., Krisch, et al., *supra* note 22, 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”); Megiddo, *supra* note 14, at 116.

114. Megiddo, *supra* note 14, at 125.

115. *Id.*

116. See generally Blanton, et al., *supra* note 25, at 324-336 (finding that IMF and World Bank policies impact domestic labor policies); Ebert, *supra* note 12, at 106 (noting the “significant implications” of the economic approach for the ILO’s labor rights).

117. 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, 278 (Springer 2018) (arguing that the World Bank’s activities “have in practice pushed for reforms to reduce the protection of domestic labour law.”).

IMF and member governments on labor policies such as unemployment benefits, minimum wages, working hours, employment laws, severance payments, social safety nets, and collective-bargaining mechanisms.<sup>118</sup> 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.”<sup>119</sup> Ebert finds that “there is no evidence” that the IMF has ever consulted the ILO on labor law-related policies in formulating its labor-related conditions.<sup>120</sup>

If the above principal-agent theories are true, individual governments wield sufficient power to avoid organizational conflict by prompting evolution.<sup>121</sup> Those theories overlook a critical detail: individual governments must secure agreement and the necessary consensus among other diverse government members of international organizations for that evolution to take root.<sup>122</sup> This Section describes how governmental initiatives have failed to garner the necessary support and, consequently, could not galvanize the requisite evolution.

First, consider the United States, which is a powerful government member of the World Bank.<sup>123</sup> Through its project-financing process, the US government tries to reconcile economic and rights-based policies within those organizations.<sup>124</sup> By congressional mandate, the US government screens all World Bank projects before it approves them.<sup>125</sup> One of those screening objectives is to protect

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118. See Ebert, *supra* note 12, at 114-15 (describing the IMF’s Art. IV Consultations).

119. *Id.* at 122.

120. *Id.* at 118.

121. See Julia Gray, *Life, Death, or Zombie? The Vitality of International Organizations*, 62 INT’L STUD. Q. 1, 4 (2018) (identifying weaknesses in the traditional principal-agent theory in international organization, which overlooks factors such as the organizations’ internal bureaucracies).

122. See *id.* at 9 (showing empirically that international organizations with diverse memberships tend not to be used by their members); see generally Maria Josepha Debre & Hylke Dijkstra, *Institutional design for a post-liberal order: why some international organizations live longer than others*, 27 EUR. J. INT’L REL. 311, 315 (2020) (arguing that international organizations must be able to adapt to diverse government members that exert pressure from multiple angles); Mette Eilstrup-Sangiovanni & Daniel Verdier, *To Reform or to Replace? Institutional succession in international organizations*, EUR. UNIV. INST. WORKING PAPERS RSC 2021/20 4 (2021) (noting that institutional reform is “vulnerable to veto players and may involve high transaction costs”).

123. 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). 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).

124. See IFC, 2005 Sustainability Report 14 (2005),

[https://www.scribd.com/fullscreen/16944917?access\\_key=key-1duzq2vi5a8mn4yookx3](https://www.scribd.com/fullscreen/16944917?access_key=key-1duzq2vi5a8mn4yookx3).

125. 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 SARAH BABB, BEHIND THE DEVELOPMENT BANKS 170 (2009).

internationally recognized worker rights.<sup>126</sup> The US government confirms that international organizations such as the World Bank have agreed to its rights commitments as *quid pro quo* to funding the development programs in question through an interagency process.<sup>127</sup> As Philip Alston and Mary Robinson note, however, those kinds of internal rights-based efforts have been largely unsuccessful.<sup>128</sup> That is because the World Bank's *other* government members have strenuously resisted, thus forcing the World Bank to "avoid controversy" by mainly sticking to its traditional approach.<sup>129</sup>

A second example concerns China, another powerful government that sought to change the World Bank's reporting methodology. In June 2020, responding to allegations of "data irregularities" in its flagship *Doing Business* reports published in 2018 and 2020,<sup>130</sup> the World Bank initiated an external audit.<sup>131</sup> The auditors discovered that China had complained to the World Bank's leadership about the country's initial ranking in those reports.<sup>132</sup> The audit traced a series of internal World Bank actions to "boost China's ranking" by making various methodological changes to the report.<sup>133</sup> In September 2021, facing significant public outcry for changing its methodology as urged by China, the World Bank announced that it was discontinuing its *Doing Business* report altogether.<sup>134</sup> While China's efforts were undoubtedly self-serving, the reactions of other governments and the public more broadly suggest that State-driven efforts are met with greater resistance than the above theories appreciate.

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

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

128. See Philip Alston & Mary Robinson, *The Challenge of Ensuring the Mutuality of Human Rights and Development Endeavours*, in HUMAN RIGHTS AND DEVELOPMENT 4 (Philip Alston & Mary Robinson eds., 2009).

129. *Id.*

130. See RONALD C. MACHEN ET AL., INVESTIGATION OF DATA IRREGULARITIES IN *DOING BUSINESS 2018* AND *DOING BUSINESS 2020* (2021) (report prepared by WilmerHale), <https://thedocs.worldbank.org/en/doc/84a922cc9273b7b120d49ad3b9e9d3f9-0090012021/original/DB-Investigation-Findings-and-Report-to-the-Board-of-Executive-Directors-September-15-2021.pdf>.

131. *Id.* at para. 1.

132. *Id.* at paras. 3-5.

133. *Id.* at para. 10.

134. See World Bank, *World Bank to Discontinue Doing Business Report* (Sept. 16, 2021), <https://www.worldbank.org/en/news/statement/2021/09/16/world-bank-group-to-discontinue-doing-business-report>.

A third example concerns developed countries' failed efforts to galvanize a rights-based evolution in the trade context.<sup>135</sup> The World Trade Organization (WTO) oversees multilateral trade rules.<sup>136</sup> Scholars and rights advocates have repeatedly argued that the WTO's trade rules prioritize profits over labor rights by encouraging firms to reduce production costs at the expense of rights protections.<sup>137</sup> They have consequently called on the WTO to link trade and labor rights.<sup>138</sup> Within the WTO, however, developed and developing member countries sharply disagree on the trade-labor link. Over the past thirty years, developed countries such as the United States and EU Member States have advocated for protecting labor rights at the WTO. Many developing countries have resisted out of fear that the link would enable disguised protectionism.<sup>139</sup> The WTO's trade rules, consequently, continue to omit labor-rights protections.<sup>140</sup>

In addition to garnering the necessary consensus among members, internal efforts to transform institutional policy must also attract the support of the international organizations' staff (or "bureaucracies").<sup>141</sup> Building on Julia Gray's studies on the role and influence of international organizations' staff on internal

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135. See, e.g., Klye Bagwell & Robert W. Staiger, *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).

136. 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.").

137. 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 trade policy); 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).

138. The literature is replete with 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, 372-73 (2004). See also Simon Tay, *Trade and Labor*, in DEVELOPMENT, TRADE, AND THE WTO 463, 468 (Bernard Hoekman, Aaditya, & Philip English eds., 2002) (noting the "many suggestions" for the WTO to take up labor matters).

139. 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); Desirée LeClercq, *The Disparate Treatment of Rights in U.S. Trade*, 90 FORD. L. REV. 1, 14-15 (2021) (describing the efforts by the United States and other developed countries to align labor and economic policies at the WTO since the 1990s, and the accusations of developing countries of disguised protectionism).

140. See LeClercq, *supra* note 139, at 12-14 (describing how efforts to embed social liberal values such as labor rights in multilateral trade failed to manifest).

141. See, e.g., Hirschmann, *supra* note 99 at 1963-64.

policies,<sup>142</sup> Gisela Hirschmann further describes how those staff members “limit and push back against contestation by member states.”<sup>143</sup>

All of these scenarios—whether horizontally across members or vertically between members and internal bureaucracies—demonstrate that evolution in international organizations is not as automatic or organic as commonly believed. And while scholars contentedly wait for the gradual percolation of cohesive norms, developing countries face conflicting commitments and advice concerning their economic and rights-based policies.

Until now, this Article has described and addressed various theoretical accounts of conflict between economic and rights-based approaches. In the next Section, I trace that conflict to the international organizations’ constitutive instruments. Through a legal institutionalist lens, I demonstrate how governments deliberately designed those constitutive instruments to achieve specific rights or economic objectives.

In that sense, governments have contributed to international organizations’ various pathways and the internal resistance to change. Recall, for example, that developing countries blocked attempts to align the WTO’s economic approach with labor rights<sup>144</sup> and have resisted a rights-based approach within economic-based organizations.<sup>145</sup> Governments may make those incompatible contributions deliberately—they may benefit from the legal ambiguity that arises when international legal commitments conflict. They may also do so inadvertently; it is possible that governmental agencies fail to communicate across national economic and rights-based strategies.

Nevertheless, the overlap and conflict during the COVID-19 pandemic demonstrate how the activities of international organizations might cause confusion, redirect resources, and even harm the rights of the populations within countries. Perhaps, then, the pandemic might mark a critical inflection point. Member governments aware of the immediate costs of conflict may adopt a greater tolerance for cross-pollination across international organizations. I discuss that possibility in Part III.

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142. See Gray, *supra* note 121, at 1-2 (describing the importance of staff in formulating international organizations’ reactions to member State contestation).

143. Hirschmann, *supra* note 99 at 1967; see also Steffen Eckharda, Ronny Patz, Mirco Schönfeld & Hilde van Meegdenburg, *International bureaucrats in the UN Security Council debates: A speaker-topic network analysis*, 28 J. EUR. PUB. POL’Y 1, 2 (2021) (applying a quantitative corpus analysis to further show how UN “officials tabled [a] controversial policy option ... until it received sufficient attention and support”).

144. See Plasa, 139 note 139, at 20-24.

145. See generally Alston & Robinson, *supra* note 128, at 4.

*B. Legal Institutional Theory*

Legal instrumentalism explains and corrects some of the false assumptions that undergird scholarly theories conceptualizing organizational overlap. It is a pragmatic theory that emphasizes the primacy of achieving the law's objectives over abstracting ideologies and principles under an *a priori* normative view.<sup>146</sup> It assumes that laws and rules form a “body of practical tools for serving substantive goals.”<sup>147</sup> In the international organizations' context, legal instruments—such as articles of agreements—inform their institutional ideologies, pathologies, operation methods, and policies.<sup>148</sup> 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 for populations and member governments.<sup>149</sup>

This Section applies a legal institutionalist lens to explicate conflict across organizations like the World Bank, the IMF, and the ILO. This approach is bound to draw the ire of my constructivist legal colleagues who dismiss institutionalism as being “overly legalistic.”<sup>150</sup> Julian Arato, for instance, argues that the activities of international organizations are more fluid than their formal constitutions would suggest.<sup>151</sup> He contends that their activities instead reflect a “wide array of laws and customs . . . developed through legislation, judgment, convention or other practices.”<sup>152</sup> I agree with Arato's argument that, through their interpretive processes, international organizations enjoy a particular policy space along the margins. As will be discussed below, for example, the World Bank has taken some steps towards incorporating social protection within the framework of specific lending programs. Nevertheless, as the COVID-19 activities demonstrate, those steps only go so far. Policy space does not allow, nor is anyone suggesting that it allows, organizations to abdicate their constitutional objectives altogether.

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146. 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, 863 (1981)

147. *Id.*

148. 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 102, 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,” so those organizations create an internal hierarchy of “‘core’ obligations” that did not exist at their founding).

149. See 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).

150. See Arato, *supra* note 6, at 303.

151. *Id.* at 302.

152. *Id.*

Because of their legal instruments, the ILO, the IMF, and the World Bank's policy objectives are innately different.<sup>153</sup> The following Sections describe those legal instruments. They explain how the IMF and World Bank's legal instruments prioritize fiscal growth, often calling for governmental austerity through prescriptive methodologies. The ILO's legal instruments, by contrast, prioritize governmental support for fundamental labor rights through a process-oriented methodology. Through that lens, the COVID-19 recovery activities were necessary and predictable means of achieving the organizations' constitutional ends.

### 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.<sup>154</sup> 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.<sup>155</sup> Towards those goals, the World Bank's investment projects provide loans, grants, and guaranteed financing to governments that ensure "social development and inclusion."<sup>156</sup> Its investment projects include policy guidance and technical support on labor and working conditions, among other social policies.<sup>157</sup> 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.<sup>158</sup> The World Bank's activities also emphasize the rule of law, which focuses on enforcing extant laws in recipient countries.<sup>159</sup>

Following up on its commitments under the UN SDGs, in August 2016, the World Bank adopted an Environmental and Social Framework (ESF).<sup>160</sup> The ESF

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153. *See infra* Part II.B.1. *See also* KLABBERS, *supra* note 6, at 116 (discussing the innate difference in economic and rights-based mandates).

154. *See* World Bank, IBRD Articles of Agreement 1, 3 (2012).

155. *See* WORLD BANK, THE WORLD BANK ENVIRONMENTAL AND SOCIAL FRAMEWORK, 1 (2017), <https://thedocs.worldbank.org/en/doc/837721522762050108-0290022018/original/ESFFramework.pdf>.

156. *Id.*

157. *Id.* at 31.

158. *See* World Bank, Labor Markets Overview, (April 2018),

<https://www.worldbank.org/en/topic/labormarkets>.

159. *See* World Bank, Justice and Development (2020),

<https://www.worldbank.org/en/topic/governance/brief/justice-rights-and-public-safety>.

160. *See, e.g.,* World Bank, *Review and Update of the World Bank's Safeguard Policies: Environmental and Social Framework (Proposed Third Draft)* 5 (July 20, 2016) (discussing the development of the then-draft Framework to "support both Bank and borrowers in realizing the Sustainable Development Goals (SDGs)"), <https://documents1.worldbank.org/curated/en/748451469107442841/pdf/107175-BR-R2016-0145-IDA-R2016-0198-Box396279B-PUBLIC.pdf>.



contains ten Environmental and Social Standards (ESS) that set out conditions for borrowers when undertaking public sector projects that include international labor standards.<sup>161</sup> Under ESS2—the second standard of the ESS—borrowers must promote non-discrimination and prevent the use of all forced and child labor. Borrowers must also “support the principles of freedom of association and collective bargaining . . . in a manner consistent with national law.”<sup>162</sup>

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.”<sup>163</sup> It earmarked \$160 billion in funds to assist governments in recovering from the pandemic’s “health, economic and social shocks.”<sup>164</sup> In keeping with the World Bank’s emphasis on the rule of law, its COVID-19 activities held governments to their commitments to their extant labor laws.<sup>165</sup> Those activities, as explained in Part I, were inconsistent with the ILO’s process-oriented rights activities.

Unlike the World Bank’s instruments, 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.”<sup>166</sup> To do so, the IMF monitors countries’ economic and financial policies, provides technical assistance and training to countries, and provides members with financing.<sup>167</sup>

For its part, the IMF earmarked \$1 trillion to support governments through COVID-19 dedicated lending arrangements.<sup>168</sup> Those funds, including its loan instruments, provided “vital emergency medical and other relief efforts while these members combat the impact of the pandemic.”<sup>169</sup> Through its Catastrophe Containment and Relief Trust (CCRT), the IMF also offered immediate debt

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161. See World Bank, *The World Bank Environmental and Social Framework*, *supra* note 155, at 15.

162. *Id.* at 31.

163. See *supra* note 39 at 12, para. 27.

164. 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>.

165. 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).

166. IMF, ARTICLES OF AGREEMENT (1944), 2, <https://www.imf.org/external/pubs/ft/aa/pdf/aa.pdf>.

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

168. See IMF, *COVID-19 Financial Assistance and Debt Service Relief* (Oct. 27, 2021) <https://www.imf.org/en/Topics/imf-and-covid19/COVID-Lending-Tracker>.

169. *Id.* at 1.

service relief to a limited number of countries<sup>170</sup> and augmented its existing loan programs to accommodate evolving needs during the pandemic.<sup>171</sup>

According to the IMF, its emergency lending measures did “not entail program-based conditionality or reviews.”<sup>172</sup> Despite that assurance, the IMF’s COVID-19 recovery loans often expressly incorporated the conditions and commitments that recipient governments made in pre-pandemic loan arrangements.<sup>173</sup> Those prior loans reflect the IMF’s institutional objective to promote fiscal order by restricting public spending.<sup>174</sup> Some of the IMF’s COVID-19 loan arrangements authorized recipient governments to invest in public spending for labor-related policies. Those arrangements also made clear that governments were to roll back that spending the moment conditions improved.<sup>175</sup>

The IMF’s COVID-19 loan arrangements reflect its charter, which prioritizes public savings and fostering an appealing investment climate 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.

Before the pandemic, scholars described instances in which the strict austerity measures imposed through conditionality were carried out at the expense of rights. Since the 1980s, the IMF and the World Bank have linked their financing to structural adjustment programs.<sup>176</sup> Those programs often include labor-related austerity measures<sup>177</sup> implicating national laws and policies.<sup>178</sup> For instance, some programs require recipient governments to adopt labor-market flexibility

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170. See IMF, *Questions and Answers: The IMF’s Response to COVID-19* (Apr. 2021), <https://www.imf.org/en/About/FAQ/imf-response-to-covid-19>.

171. *Id.*

172. See IMF, *Transcript of IMF Press Briefing* (May 2020), 2, <https://www.imf.org/en/News/Articles/2020/05/21/tr052120-transcript-of-imf-press-briefing>; see also *Questions and Answers: the IMF’s Response to COVID-19*, *supra* note 170.

173. See *supra* Part I.C.

174. *Id.*

175. *Id.*

176. See Momani & Hibben, *supra* note 94, at 29-32; see also IMF, *Questions and Answers: The IMF’s Response to COVID-19*, *supra* note 170.

177. See World Bank, *Annual Report* (1980); see also James Cypher & James Dietz, *The Process of Economic Development* 517 (2d ed. 2004).

178. 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 123, at 79-80; Mark Anner & Teri Caraway, *International institutions and workers’ rights: Between labor standards and market flexibility*, 45 *STUD. IN COMP INTERN’L DEV.* 151, 161-64 (2010).

measures,<sup>179</sup> which the IMF and World Bank view as necessary for domestic economic growth.<sup>180</sup>

The IMF and World Bank's requisite labor-market measures have had immediate impacts on national labor policies. For instance, labor advocates have linked those measures to higher discrimination levels, lower unionization rates,<sup>181</sup> income inequality and relatively lower wages,<sup>182</sup> and unemployment.<sup>183</sup> The labor-market policies also grant employers broader authority to hire and fire employees, determine working hours, and relax restrictions on temporary labor contracts.<sup>184</sup> 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."<sup>185</sup>

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179. 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).

180. See Blanton, et al., *supra* note 25, at 326.

181. 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).

182. See Blanton, et al., *supra* note 25, at 325 (and citations therein).

183. 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.");

184. *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).

185. See Anner & Caraway, *supra* note 178, at 160 ("Not only can they cut off loan disbursements, but their disapproval often results in the failure of developing countries to receive loans elsewhere.");

Put broadly, rights scholars criticize the IMF and World Bank's economic approach for being at odds with "worker rights *writ large*."<sup>186</sup> Rather than prioritizing labor outcomes, the economic approach considers labor rights by assessing "the effects of unions and labor standards on economic outcomes."<sup>187</sup> 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.<sup>188</sup> Against this backdrop, the IMF and World Bank's COVID-19 activities referencing austerity and concretizing substandard labor legislation<sup>189</sup> 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 and social advancement" of less developed countries.<sup>190</sup> Its policies aim to encourage member countries to ratify and effectively implement the international labor rights considered fundamental to decent work and living conditions.<sup>191</sup>

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."<sup>192</sup> Conceding that traditional economists view international labor standards "as being costly and therefore hindering economic development," the ILO stresses that its system of standards is nevertheless "often accompanied by improvements in productivity and economic performance."<sup>193</sup>

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 ILO formulates its activities and standards through a tripartite, consultative process as

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186. See Blanton, et al., *supra* note 25, at 325-27 (arguing that IMF and World Bank policy conditions "create negative consequences for collective labor rights.") (emphasis added).

187. See Anner & Caraway, *supra* note 178, at 156.

188. *Id.*, at 158.

189. See *supra* Part I.B-C.

190. See ILO CONST. (as amended 1974).

191. See RULES OF THE GAME, *supra* note 28, at 13, 25.

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

193. See RULES OF THE GAME, *supra* note 28, at 14.

required by its Constitution.<sup>194</sup> In that sense, the ILO's policy recommendations and assistance are process-oriented and rest on consultations with employers' and workers' national representatives.<sup>195</sup>

The ILO's Constitution also sets out its supervisory system, an intricate machinery composed of cyclical reporting, dialogue, and technical assistance.<sup>196</sup> If a government ratifies an ILO convention and fails to implement it in law or in 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.<sup>197</sup> 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.<sup>198</sup>

The ILO's rights-based COVID-19 recovery measures reflect its institutional design. Its activities consist primarily of technical assistance and advice that the organization crafts through consultations and programs.<sup>199</sup> Those activities vary depending on request<sup>200</sup> and range from drafting labor legislation (through consultations with the governments and national representatives of workers and employers<sup>201</sup>), 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.<sup>202</sup>

Just as rights advocates have criticized the World Bank and IMF's policies, economists have criticized the ILO's labor-rights interventions. Some complain that the ILO's emphasis on trade unions creates "rent-seeking costs."<sup>203</sup> Under that view, the types of policies advanced by unions create less competitive product

194. 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 28, at 14 ("The ILO's unique tripartite structure ensures that these standards are backed by governments, employers and workers alike.").

195. RULES OF THE GAME, *supra* note 28, 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).

196. See ILO CONST, arts. 22-30; RULES OF THE GAME, *supra* note 28, at 105.

197. See RULES OF THE GAME, *supra* note 28, at 106-07.

198. 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>.

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

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

201. See, e.g., ILO, ILO Standards and COVID-19 (coronavirus) FAQ (2020), at 7-8.

202. *Id.* at 10.

203. See generally Zafiris Tzannatos, *The Impact of Trade Unions: What do Economists Say*, in IN DEFENCE OF LABOUR MARKET INSTITUTIONS 152 (Janine Berg & David Kucera eds., 2008) (describing various economist views of trade union policies).

markets, distort the market, result in inefficiency, and are associated with “large distributional costs” to society.<sup>204</sup> Against that backdrop, the ILO’s COVID-19 recovery activities furthered its constitutional ends, but its process-oriented methodologies and focus on associational rights conflicted with the prescriptive methods and market-oriented approaches of the IMF and the World Bank.

### C. Implications of Overlap and Conflict

The implications of inter-organizational conflict are significant, particularly for the government members and, ultimately, their populations 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 choose, governments in developing countries must prioritize some organizational approaches to the detriment of others.<sup>205</sup> Those governments were already struggling to reconcile their economic development objectives while ensuring costly social rights.<sup>206</sup> Faced with economic shocks, those governments are more likely to prioritize whichever approach is linked to direct financing over that which is merely linked to technical assistance.

This latter consequence does not bode well for the ILO’s rights-based approach. It also does not bode well for the vulnerable workers within those countries who counted on the ILO’s approach to strengthen labor laws and broaden public safety nets.

The conflict between economic and rights-based approaches will also have significant implications for developed countries such as the United States. As mentioned, the US government prefaces its financial contributions to organizations on the condition that economic policies align with rights-based policies.<sup>207</sup> Nevertheless, as demonstrated in the COVID-19 recovery activities, the governments’ ability to influence the broader programming and in-country activities in organizations like the World Bank and the IMF has not effectuated meaningful evolution.<sup>208</sup>

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204. *Id.* at 152; see also Richard B. Freeman, *Labor Market Institutions and Policies: Help or Hinderance to Economic Development*, Proceedings of the World Bank Annual Conference on Development Economics 118 (1992) (describing the “Bank Distortion View” that considers labor-rights “interventions [as] first and foremost distortions”).

205. See ZÜRIN, *supra* note 1, at 12-13 (describing the connection between contestation and delegitimization of international organizations).

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

207. See *supra* Part II.A.3.

208. *Id.*

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 international organizations' internal processes and policies may simply form new organizations that better reflect their ideals and priorities.<sup>209</sup> The resulting proliferation of international organizations contributes to further overlap and competition.<sup>210</sup> It also contributes to global governance's decentralization and delegitimization.<sup>211</sup> In the trade context, for instance, governments have simply given up on the international organizations' platform, opting instead to govern social rights in trade through their bilateral and multilateral trade agreements.<sup>212</sup> The imposition, interpretation, and enforcement of rights within those individual efforts raise additional concerns of compatibility and coherence.<sup>213</sup>

Governments, vulnerable populations, and the broader UN system do not have time to wait for competing norms across overlapping international organizations to evolve. Developing countries need immediate resources and coherent advice, even if they are suspicious of marrying social and economic approaches more broadly on multilateral platforms. Developed countries are increasingly demanding cohesion across economic and rights approaches. International organizations are viewed less as epistemic authorities and more like ineffective competitors.<sup>214</sup> The international system requires immediate solutions.

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209. See Mariana Mota Prado & Steven J. Hoffman, The promises and perils of international institutional bypasses: Defining a new concept and its policy implications for global governance, 10 *TRANSN'TL LEG. THEORY* 275, 276 (2019) (“Just like surgeons grafting new pathways around blocked arteries in coronary bypasses, global governors are increasingly responding to clogged international institutions by creating new ones that work . . . .”); Tyler Pratt, Angling for Influence: Institutional Proliferation in Development Banking, 65 *INT'L STUD. QUART.* 95, 95 (2021) (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.”).

210. See Prado & Hoffman, *supra* note 209, 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.”).

211. See Pratt, *supra* note 209, at 95-96 (describing the competition, reduced legitimacy and redundancy associated with the proliferation of international organizations).

212. See Vineet Hegde, Jan Wouters & Akhil Raina, *Is the rules-based multilateral trade order in decline? Current practices, trends and their impact*, 10 *CAMB. INT'L L.J.* 32, 40-46 (2021) (describing the various State practices that have arisen outside of the WTO's context). For a description of the prevalence of 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, 354-55 (2015).

213. *Id.* at 361-67 (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.”).

214. See *supra* Introduction.

A conflict that is attributable to distinctive legal instruments will be more difficult to remedy than an issue-specific or organization-specific conflict, however.<sup>215</sup> International organizations will have to do more than cooperate. They will either need to reconcile incompatibilities within their legal instruments—what promises to be a lengthy if not improbable process<sup>216</sup>—or find short-term solutions that enable their respective institutions to foster solutions on a narrower 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 might somehow evolve and thus reconcile naturally.<sup>217</sup> That assumption has proven to be 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 would require the staff members of international organizations to resolve project-level conflicts while avoiding more significant institutional tensions.

##### A. *The Failure of Institutional Coordination*

The scholarly theories examining organizational overlap and conflict presuppose that institutional approaches and normative values are fluid.<sup>218</sup> Those scholars will likely disagree with my legal institutionalist approach given its rigidity in law and impatience with construction. I do not suggest that evolution within institutional practices, norms, and conceptions is impossible. Indeed, the legal instruments of international organizations likely contain sufficient ambiguities and hortatory aspirations to enable some movement towards

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215. See Klaus Dingwerth, Antonia Witt, Ina Lehmann, Ellen Reichel, & Tobias Weise, *Introduction*, in *INTERNATIONAL ORGANIZATIONS 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.”).

216. 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 theory of justice which, in a pluralist and divided world, is lacking.”).

217. 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).

218. See *supra*, Part II.A.



coherence, eventually.<sup>219</sup> To the extent that evolution might ever occur, however, the process would be gradual and incremental and would turn on the will of diverse governments. Tellingly, despite the possibility of such an evolution and cohesion, previous efforts across organizations to reconcile their economic and rights-based approaches on a grander scale have ended in stalemate.

The ILO, the IMF, and the World Bank leaders have previously acknowledged the potential for conflict across overlapping activities and have attempted to reconcile their conflict on an institutional basis.<sup>220</sup> Owing to the close relationship between the IMF Managing Director and the ILO Director-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.<sup>221</sup> Since 1999, the ILO has likewise enjoyed observer status at the IMF/World Bank Development Committees.<sup>222</sup> That collaboration conceptually, seems to bolster scholarly theories of internal evolution and reconciliation discussed above.

To the disappointment of many,<sup>223</sup> this institutional collaboration has not aged well. As observed by Francis Maupain, the former ILO legal advisor, the IMF and ILO agreement dissolved during the European debt crisis.<sup>224</sup> To assist their members in recovering economically, the IMF reverted to austerity at the expense of social rights, thus confirming "the fragility" of the process.<sup>225</sup> The World Bank's efforts to resolve tensions with the ILO's approach have also proven ineffective.<sup>226</sup> Even though the World Bank's ESS2 projects reference

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219. See, e.g., WORLD BANK, IBRD ARTICLES OF AGREEMENT, *supra* note 154, at art. I(iii) (promoting assistance in "raising productivity, the standard of living *and conditions of labor* in their territories") (emphasis added); IMF, ARTICLES OF AGREEMENT, *supra* note 166, at art. I(ii) (indicating that one purpose of the IMF is to "contribute thereby to the promotion and maintenance of high levels of employment and real income").

220. See Anner & Caraway, *supra* note 185, at 162-63; IMF, Independent Evaluation Office of the International Monetary Fund, The IMF and Social Protection 33 (2017) [hereinafter The IMF and Social Protection]

221. See *id.* at 157.

222. *Id.*

223. See, e.g., Hannah Murphy, *The World Bank and Core Labour Standards: Between Flexibility and Regulation*, 21 REV. INT'L POL. ECON. 399, 400 (2014) ("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](https://academicworks.cuny.edu/cgi/viewcontent.cgi?article=1204&context=jj_pubs).

224. See Francis Maupain, *The Future of the International Labour Organization in the Global Economy* 101 (2013).

225. *Id.*

226. See Ebert, *supra* note 12, at 118.

labor standards, as described earlier, that institutional step has not resolved economic and labor rights tensions.<sup>227</sup>

As the World Bank attempts to fold social rights into its economic approach, it also risks conflicting with the IMF's economic activities, which have not warmed to a social approach.<sup>228</sup> A 2020 IMF Independent Auditing Report notes that the IMF and the World Bank are increasingly working on the same issues.<sup>229</sup> The IMF and World Bank are consequently searching for ways to reconcile their approaches, including proposals to delineate responsibilities to avoid overlap.<sup>230</sup>

### B. An Alternative: Project-Level Coordination

The legal instruments of international organizations have chartered different economic and social paths. Despite the efforts of some governments to push for coherence, other governments—particularly in developing countries—have resisted efforts to marry social and economic approaches. Rather than attempt to resolve legal, institutional, and ideological differences on a broad scale, international organizations should take a more modest approach: they should negotiate their economic and social objectives 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. It would nevertheless enable staff to find common ground or at least raise institutional awareness of potential conflict. In sum, the coordination would enable coherent assistance in countries without requiring broader support for institutional-level policies. This Section explains the three elements of this coordination and its potential benefits and drawbacks.

First, international organizations should *require* that their staff coordinate on the project level. International organizations participating in the UN system have already committed to implementing the SDGs.<sup>231</sup> By mandating coordination, including on thorny issues that would be easier for staff to ignore or otherwise “actively shape,”<sup>232</sup> those organizations would satisfy their SDG commitment. Those organizations would also ensure that their staff participate in small-scale reconciliation rather than “limit and push back against” normative changes.<sup>233</sup>

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227. See *supra* Part II.B.

228. See Momani, et al., *supra* note 94, at 27-29; Kranke, *supra* note 2, at 1-3; THE IMF AND SOCIAL PROTECTION, *supra* note 220, at 1.

229. See IMF, Independent Evaluation Office of the International Monetary Fund, IMF Collaboration with the World Bank on Macro-Structural Issues 1 (2020).

230. *Id.*

231. See *supra* Part II.

232. See Hirschmann, *supra* note 99 at 1966.

233. *Id.* at 1967 (describing how staff members prevent member state contestation from effectuating institutional resolutions).

Second, international organizations should specify that those inter-organizational consultations occur during the *ex-ante* design stage. 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 to ensure coherence.

Third, and responsive to the second element above, coordination should focus on raising awareness and bargaining over approaches rather than pre-determined outcomes. Drawing from the ILO's consultation processes, that objective should not "require negotiations leading to an agreement."<sup>234</sup> Instead, the key will be for international organizations to consider "the views of those concerned . . . before decisions are taken."<sup>235</sup>

The COVID-19 activities described in Part I offer examples of how this *ex-ante* coordination could have helped international organizations avoid inconsistency and incompatibility. First, had the ILO and World Bank staffers coordinated on the ESS2 language in their overlapping COVID-19 activities in the Maldives and Georgia,<sup>236</sup> 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,<sup>237</sup> the World Bank and the IMF could have also agreed on the exact scope and extent of public-sector spending within the scope of IMF conditionality. Third, had the IMF and ILO coordinated 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 are in turn linked to a more attractive investment climate.<sup>238</sup>

My proposal aims to advance coordination along policy lines, but I recognize that it faces several 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. As mentioned earlier, international organizations are composed of diverse governments that disagree on economic and rights-based approaches. In addition, the staff members of those organizations may not want to compromise on issues of constitutional

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

235. *Id.* at 7.

236. For a discussion of those overlapping activities, *see supra* Part I.B.

237. For a discussion of those overlapping activities, *see supra* Part I.C.

238. *See generally* George S. Pultz, *Multinational Regulation of MNE Labor Relations*, 4 B.C. INT'L & COMP. L. REV. 409, 419-20 (1981) (discussing efforts of multinational enterprises to attract investments by imposing codes of conduct regulating labor relations).

importance. Continuing to operate in a silo may be easier, and, at times, ignorance of conflict and its potential impact on vulnerable populations may be bliss.

While many tensions across economic development and rights may be resolvable on a narrow basis, some may not be. It is difficult to imagine, for instance, how governments might simultaneously relax punitive fines on employers for violating labor laws and strengthen compliance with labor laws. A persistent failure to achieve desired results may further deter future cooperation.

Despite these drawbacks, the diverse governments within international organizations may still agree to the proposed mechanism as a whole. Those governments 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 approaches. Finally, the overlap and conflict across economic and rights-based approaches have rendered programming inefficient, at best. Member governments would want to see their organizations succeed on an institutional level.<sup>239</sup>

By sitting down at the negotiation table, even if staff members cannot reach a consensus, the resulting activities across international organizations will be informed and deliberate. Although the respective legal instruments of economic and rights-based international organizations frame 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 gray areas between the mandated approaches. Those areas may be identified and exploited but only if there is an opportunity for discussion.

### 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.<sup>240</sup> The UN harmonizes its development activities within its umbrella United Nations Country Teams (UNCTs). Its UNCTs operate in over 131 countries and include inputs from participating international organizations.<sup>241</sup>

The UNCT prompts inter-agency coordination and decision making at the national level. Through the UNCTs, the UN requests that international organizations “plan and work together . . . to ensure the delivery of tangible results

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

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

241. See UN Sustainable Development Group, *How We Work*, <https://unsdg.un.org/about/how-we-work> (last visited Sept. 20, 2021).

in support of the development agenda of the Government.”<sup>242</sup> The Resident Coordinator (RC) position leads the current UNCT process and is responsible for ensuring “system-wide accountability” and “coordinating UN support to countries in their implementation of the 2030 Agenda.”<sup>243</sup> There are currently 129 RCs leading 131 UNCTs.<sup>244</sup>

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.<sup>245</sup> The RC was accordingly unable to integrate coordination,<sup>246</sup> an omission reflected in 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. As described earlier,<sup>247</sup> my proposal would remedy this gap by requiring staff to participate.

In January 2019, the UN attempted to strengthen the RC’s role and authority within the framework of the 2030 Agenda.<sup>248</sup> Noting that the process received “unanimous support from Member States,”<sup>249</sup> the UN nevertheless conceded that the reform’s success must 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.”<sup>250</sup>

If the yardstick for RC reform is the support of countries “as one,” then, based on its COVID-19 activities, the UN’s recent efforts have fallen short. The UN has even attempted to redress its residual fragmentation during the pandemic by launching a new UN Framework for the Immediate Socio-Economic Response

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242. *Id.*

243. *Id.*

244. See UN, *The UN Resident Coordinator system - an overview* (Nov. 2020) <https://unsdg.un.org/sites/default/files/QCPR-Info-Brief-2-UN-RC-System-UN-DOCO-Nov-2016.pdf>.

245. 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).

246. See Susanna P. Campbell & Anja 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.”).

247. See *supra*, Part II.B.

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

249. *Id.*

250. *Id.*

to COVID-19 (SERF).<sup>251</sup> Under that framework, the UN is implementing Socio Economic Response Plans (SERPs) to support countries and populations. However, like the UNCTs, the SERF merely *invites* coordination with organizations like the IMF and the World Bank.<sup>252</sup> Since launching the SERF, the UN reports that the World Bank has provided “some input” in just over one-half of the SERPs and that the IMF has only provided “some input” in about thirty-two percent of the SERPs.<sup>253</sup>

The UN system is trying to improve coordination between international organizations within its ambit. It should direct its efforts at ensuring that participation is mandatory, *ex-ante*, and on an in-country project basis.<sup>254</sup> That its recent efforts have enjoyed sufficient 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’s purview. Therefore, it is critical for the UN system to consult international organizations 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 mark a significant improvement.

#### CONCLUSION

The implications of overlap and conflict across economic and rights-based international organizations are far-reaching. International organizations imposed incompatible commitments and policies on member governments while vulnerable populations struggled under the weight of a multidimensional pandemic. This incompatibility hindered global governance. It also introduced uncertainty and competing expertise when governments and their populations needed coordination.

As they say, never waste a good crisis. In his early work on institutional linkages, Oran Young argues that “incompatible arrangements” of overlapping

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251. See UN, *A UN Framework for the immediate socio-economic response to COVID-19* 2-4 (Apr. 2020), <https://unsdg.un.org/sites/default/files/2020-04/UN-Framework-for-the-immediate-socio-economic-response-to-COVID-19.pdf>.

252. *Id.* at 23.

253. See UNDP-UNDCO, *UN COVID-19 Response in Action*, Info. Bull., Iss. 2 1 (Oct. 2020), <https://www.undp.org/content/dam/undp/library/covid19/Info%20Bulletin%20SE%20Response%20Issue%202-October.pdf>.

254. Compare with MANAGEMENT AND ACCOUNTABILITY FRAMEWORK OF THE UN DEVELOPMENT AND RESIDENT COORDINATOR SYSTEM, Sec. 2.2 (“The UNCT *can* also include representatives of the wider UN system, for example, the Bretton Woods institutions.”) (emphasis added) (ed. Apr. 1-26 2019), <https://unsdg.un.org/sites/default/files/UNDS-MAF-2019-country-level-component-FINAL-editorial-rev-26APR.pdf>.

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institutions can galvanize “the development of unusually effective international regimes by stimulating efforts to think in whole-ecosystems terms and to devise integrated management practices.”<sup>255</sup> His optimism may hold true today, both within the immediate COVID-19 context and the broader context of global governance. The pandemic drew awareness to the interdependence of economic and rights-based policies. It also presented the global system with the urgent need to institutionalize mandatory yet realistic coordination. That coordination, if achieved, will benefit international organizations, their members, and the broader governance system by ensuring more robust responses to global needs in the future.

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

