

THE ROLE OF THE WORLD BANK AND THE IMF IN THE INTERNATIONAL FINANCIAL SYSTEM AND THE HUMAN RIGHTS SPHERE

Daryna Abbakumova¹

Abstract. The main *purpose* of the article is to provide legal analysis of the activities of the World Bank and the International Monetary Fund, as well as to clarify their role in the international financial system and the peculiarities of the correlation with the sphere of human rights. *Methodology.* To achieve the scientific objectivity of the results, the entire complex of general scientific and special research methods, which are widely used in the modern science of public international law and international economic law in particular, were used. Thus, the method of objectivity was used to determine the probability and completeness of the information that was used in the research process. The dialectical method was useful in studying the development of the organizational structure and powers of the World Bank and the IMF. The special legal method allowed analysing the provisions of the constituent documents of these international organizations, and system-structural – to determine their place in the international financial system. The comparative legal method has become useful in defining the features of supranationality of international organizations. *The results* of the study revealed that the World Bank and the International Monetary Fund continue to occupy key positions in the international monetary and financial system, despite the fact that they were created in the middle of the last century. It has been found that in recent years, the World Bank and the IMF have somewhat changed their position in providing financial assistance to the states. Their position has become more rigid than the one they followed at the beginning of their activity. It is established that this is manifested, first of all, in the application of the principle of good governance, when considering the issue of the allocation of money. This principle, which became fundamental in the activity of these international financial institutions, helps to determine whether the government of the state is fair and honest enough for using the provided assistance for the right purposes, not for the corrupt schemes, and whether these funds would not be stolen by the government in the future. The main *practical impact* of such research is to identify the link between the functioning of the World Bank and the IMF, which are fully focused on monetary and financial operations, and such completely remote from them area as human rights. Clarification of the relationship between the activities of these financial institutions and the field of human rights allows us to find ways to protect people, whose rights have been violated during the realization of the projects funded by the World Bank and the IMF. *Value/originality.* The main features that international intergovernmental organizations must have to be regarded as those who have supranational nature are investigated. On this basis, it was established that the World Bank and the IMF do not have supranational features, and the only organization possessing such features remains the European Union.

Key words: international financial institutions, World Bank, International Monetary Fund, International Bank for Reconstruction and Development, financial system, human rights.

JEL Classification: F33, K33, K38, F53

1. Introduction

It is difficult to imagine modern international economic relations without the work of international organizations. Since the middle of the nineteenth century, they gradually turned from small, narrow-profile associations to full-fledged subjects of international law, which we used to see now. International organizations

have a significant impact not only on the political, social, and cultural spheres but also on the economic sphere as well. A striking example of this is the World Bank and the International Monetary Fund, which are the most powerful international financial institutions created by the Bretton Woods Conference in 1944. Their functioning is the basis of the modern international

Corresponding author:

¹ Yaroslav Mudryi National Law University, Ukraine.

E-mail: abbakumova.d@gmail.com

ResearcherID: H-2525-2019

economic order that considers the removal of barriers in international trade and financial transactions as the main element in promoting the high level of employment, increasing economic prosperity and financial stability in the world. And as a result of this, achieving sustainable economic growth (Malanczuk, 2000).

The strengthening of the political and economic interdependence of states, as well as the active processes of globalization, put international monetary and financial organizations at a sufficiently high level in the system of international economic relations. They ensure the continuous functioning of the monetary and financial system, effective intergovernmental economic cooperation, which is one of the factors of guaranteeing security and political stability not only at the universal but also at the regional and state levels as well. Therefore, the research of the legal status and peculiarities of the functioning of such international financial institutions as the World Bank and the IMF is of particular importance, as they are exactly those institutions on which the whole current international financial system is kept. The purpose of the paper is to analyse the activities of the World Bank and the IMF, as well as to clarify their role in the international financial system and their relationship with the human rights sphere.

2. Literature review

Activities of international financial organizations have always attracted the attention of many scientists. Both Ukrainian and foreign scholars were engaged in the study of the legal status and functioning of the World Bank and the IMF.

Considering the legal status of international financial institutions, some scholars point out that they have the features of supranationality. So, L. Lazebnik notes that “the elements of supranationality in these organizations have received a new development and are manifested in adapted to international relations form” (Lazebnik, 2008). The scientist argues the supranational nature of the World Bank and the IMF, among other things, by their activity on regulating debt problems of member states, as these organizations play a key role in the international strategy for settling a foreign debt of the states.

O. Dunas (2010) considers that the necessity of creating international organizations with elements of supranationality is caused by the growing interdependence of states in order to solve global problems, as well as the need to create and guarantee the abundance by mandatory rules of conduct. The scholar also tends to think of the presence of supranational elements in the activities of international financial institutions, which manifests itself in their broad and rigorous competence in the field of credit, financial, and monetary matters.

V. Shumilov (2014) under the international financial organization understands such an organization, which is endowed by its members with the competence to carry out activities in the monetary and financial sphere, and which is to one extent or another involved in the functioning of the international financial system. In his view, some powers of the IMF have supranational features, such as defining the policy of the member states in the field of parity of national currencies in accordance with Art. IV of the Articles of Agreement of the IMF.

M. Ravallion refers to the World Bank as to the “knowledge bank”, but at the same time, he argues that the past attitude toward him as a “knowledge bank” did not correspond to reality. In his opinion, the World Bank, as an institution, which “explicitly committed to global poverty reduction – should be more heavily invested in knowing what is needed in its client countries, as well as in international coordination” (Ravallion, 2016).

Mac Darrow (2006) considers that the examination of such financial institutions as the World Bank and the IMF together is a natural and inevitable process, because of their historical formation. But at the same time, he stresses that they are two different types of organizations with different powers, responsibilities and benefits. Particular attention is paid to the role of international human rights law when these financial institutions realize different programs. Mac Darrow argues that the systematic appeal to human rights by the IMF as to a “social issues” or “social concerns” “is itself alarming, ignoring human rights’ very obvious ‘economic’ aspects, and consigning them by this definition to macro-economic irrelevance” (Mac Darrow, 2006).

D. Gartner (2013) examines the World Bank and the IMF in terms of transparency since, within the framework of international law, the institutional transparency is viewed as a key element in ensuring greater accountability within international organizations. Comparing these two financial institutions, the author concludes that the level of transparency of the World Bank is much higher compared to the IMF, which is reflected in its public disclosure policy, which promotes public access to previously closed information.

A. Feibelman (2013) focuses on the interactions and correlations between the IMF and the Eurozone countries. Feibelman states that “the Fund sits at a central location within the architecture of the international monetary system and plays a uniquely important role in the regulation of that system” (Feibelman, 2013).

C. Manger-Nestler stresses that “the global financial system has always been characterized by a plurality of subjects, a coexistence of actors and a variety of controlling instruments” (Manger-Nestler, 2011). The author argues that the current financial architecture is based more on the coexistence rather than the cooperation of several international actors.

3. Legal status and peculiarities of the functioning of the World Bank and the IMF

According to foreign scholars, the characteristic feature of modern international law is the progressive “cosmopolitanization” of international law, the departure from the legal system in which states are the only subjects of international law and in which the national is firmly isolated from the international one, and the transition to a transnational legal order that destroys the traditional boundaries between what is “inside” and “outside” (Reus-Smit, 2004).

International financial institutions have considerable importance in this process. By uniting a large number of states and concluding multilateral treaties within their framework, they create unique legal standards in certain areas of international law, which are subsequently implemented into domestic law and transformed into provisions of national legislation. There is a unification of the legal systems of states, which promotes a closer connection between them, and between domestic and international law.

At the same time, there is a significant difference between the functioning of international organizations and states. The last is not required to approve or justify each time their existence, referring to the fulfilment of certain functions. The existence of international organizations, including financial ones, is, on the contrary, directly related to the fulfilment of certain functions. This, in turn, requires an organizational structure, a clearly defined competence and an obligation to fulfil the functions entrusted to the international organization by the member states (Schermers & Blokker, 2011). Thus, international financial organizations and their permanent bodies are the instruments, which are used by the states to establish cooperation among themselves in certain areas.

The basis of modern international economic order is a system created by the Bretton Woods conference in 1944. Its creation took place after the end of the Second World War and was provoked by many reasons. As it is known, after the war the economy of most countries was in decline, the state budgets of the countries had chronic deficits, and the monetary circulation was inflationary. The consequences of the war have greatly changed the balance of economic forces on the world map. The economy of Germany and Japan was completely destroyed by military actions, the economy of Great Britain and France was significantly weakened, and the United States became the strongest state of the world and sought to maintain this leadership.

All countries of the world were interested in creating international financial institutions that would be able to regulate the post-war international monetary and financial relations. Increased interaction between legal entities of different states, the dependence of the world market and national economies, as well as the growth of

the movement of capital, goods, and services, reinforced the need for the international legal regulation of these relations. Thus, the crisis in international credit and monetary relations during and after the Second World War, as well as the desire of the governments of the most countries to solve these problems, taking into account the interests of each state, have become one of the main reasons for the establishment of a stable post-war monetary order and the creation of international financial organizations, which would support it.

At the same time, many scholars and experts argue that the Bretton Woods Agreement of 1944 was based on the hidden inequality of the countries and, in certain matters, infringed their interests. This appears in the fact that the United States and the United Kingdom have played an important role in the drafting of this Agreement, and thus in the creation of the IMF and the World Bank. One can see that the interests of these countries were in line with the work of these international institutions. The United States wanted to have more influence on the economies of less developed countries, but did not want to do so openly, but wanted to act covertly. To a greater extent, they have succeeded because they were able to put national currencies of the IMF member countries in dependence of the national currencies of the most developed countries such as the United States (dollar) and the United Kingdom (pounds sterling). This is not surprising, as the project of the IMF's and the World Bank's creation is owned by US and UK economists, namely senior U.S. Treasury department official Harry Dexter White and British economist John Maynard Keynes. According to A. Labunska, the United States has almost managed to achieve its goal since “the system of the gold standard has become a dollar standard” (Labunska, 2015).

However, despite the different views on the influence of certain countries on the formation and functioning of the Bretton Woods international monetary and financial system, the indisputable fact remains that the basis of its activities have been and remain the two international financial institutions, namely the IMF and the International Bank for Reconstruction and Development (one of the main institutions that compose the World Bank Group, and which most scientists and lawyers call the World Bank). As I. Kudas emphasizes, these two mutually interconnected organizations take a central place in providing the institutional mechanism for the functioning of the modern international banking system (Kudas, 2015).

Considering the IMF and the IBRD as leading financial institutions, it should be noted that their activities are based on characteristic features of classical international organizations. According to the majority of scholars, these features are: the establishment of the organization based on an international treaty; permanent internal organizational structure; the presence of a specific purpose; establishment in accordance with international

law (Schermers & Blokker, 2011; Klabbers, 2002; Shibaeva & Potochnyy, 1988). It is worth dwelling on these features, taking into account the specific functioning of the IMF and the IBRD.

When we are speaking about the legal nature of the IMF and the IBRD, it must be said that they were created on a contractual basis, as the foundation of their activities is international agreements, which are at the same time the charters of these institutions (these are the Articles of Agreement of the IMF and IBRD Articles of Agreement). They were signed by 189 countries, which testifies to the interstate nature of these organizations. It is an interesting fact that according to Section 1 of Art. 2 of the IBRD Articles of Agreement (hereinafter referred to as the IBRD Charter) the member of the IBRD can be only the state that is the member of the IMF. This means that each IBRD member country must first become a member of the International Monetary Fund. At the same time, only those countries that are members of the IBRD may be members of other organizations that compose the World Bank Group.

The legal basis for the existence and activities of the international organization, as have already been mentioned, is a multilateral treaty between member states, which is usually called a charter or a statute. As V. Moravetskiy points out, "The main role of the charter of an international organization – to bring into the framework of legal norms the process of its bodies' activities" (Moravetskiy, 1976). In his opinion, the degree of restriction of the freedom of action of organs depends on the accuracy of the formulation of statutory norms.

In addition to the contractual basis, one of the features inherent in international organizations is the presence of permanent bodies. This feature has become decisive in the process of the formation of international organizations as a separate subject of international law, which, unlike multilateral conferences, administrative and trade unions, has a permanent internal organizational structure, permanent membership composition, contractual basis and, of course, legal personality (Abbakumova, 2016). The organizational structure of the IBRD and the IMF is quite similar but there are some differences.

The main body of the IBRD is a Board of Governors, which consists of representatives of all member countries. Its competence includes solving all issues related to the development of the bank. There is also a Board of Directors consisting of 25 Executive Directors. It is formed based on two principles: the largest financial contribution and equitable geographical representation. The principle of the largest financial contribution consists in the fact that the five states with the largest amount of invested funds expressed in the quota have the right to appoint their permanent Director in the Board of Directors, and the principle of equitable geographical representation is exercised when

choosing temporary directors (Boshchytskyi, 2015). The IBRD President is elected by the Board of Executive Directors for a term of five years.

As for the IMF, its governing body is also a Board of Governors, to which each Member State sends its representative. This IMF body makes basic decisions on the Fund's activities. In addition, there is also an Executive Board consisting of 24 Directors. It is responsible for conducting current affairs of the IMF, which include a wide range of political, operational, and administrative issues. The Executive Board has the authority to elect a Managing Director for a five-year term, who heads the staff of the Fund. As well as in the IBRD, the Directors of the Executive Board of the IMF are appointed depending on the amount of financial contributions of the state. There is also the Development Committee, which is a joint IMF and IBRD body dealing with issues of providing funds to developing countries. It examines and analyses medium and long-term prospects of economic development in these countries and gives analytical reports and recommendations concerning these countries to the IMF and the IBRD Board of Governors.

Another feature of international organizations, including financial ones, is the existence of the aim. The purposes of both organizations are clearly defined in their Charters. The purpose of the IMF is defined in Art. 1 of the Articles of Agreement of the IMF. This is, in particular, the promotion of international monetary cooperation, the expansion and balanced growth of international trade, the stability of currencies and the equilibrium in the external balances of payments of member states. It also provides short-term loans to member states of the Fund to cover the temporary deficit of their balance of payments and provides advisory assistance on financial and monetary issues. As for the IBRD, its purposes are also defined in its Charter. According to Art. 1 of the Charter, the main purposes of IBRD are: to assist member countries in economic development by providing them with long-term loans and credits; encouraging foreign investment by providing guarantees or participating in loans and other private creditors' investments; encouraging long-term balanced growth of international economy and trade, and maintaining of equilibrium in balances of payments by stimulating international investment for the development of the productive resources of member states. At the time of the creation of the IBRD in 1945, its main objective was to restore the economy of Europe, which was destroyed and devastated after the Second World War. Thus, in Art. 1 of the IBRD Charter among other purposes, the first is exactly "to assist in the reconstruction and development of territories of members by facilitating the investment of capital for productive purposes, including the restoration of economies destroyed or disrupted by war, the reconversion of productive facilities to peacetime

needs and the encouragement of the development of productive facilities and resources in less developed countries." After Western European countries have gained economic stability, the IBRD focused mainly on providing assistance and long-term loans to the poorest countries in the world.

To achieve these goals, the IMF and the IBRD have a certain status and have certain rights, powers, and responsibilities endowed by the founding states, that is, both institutions have international legal personality. The charters of both organizations stipulate that both the IMF and the IBRD have the full status of a legal entity (Section 2 of Art. IX of the IMF Charter and Section 2 of Art. VII of the IBRD Charter). This appears in the fact that they can enter into contractual commitments and conclude contracts; acquire movable and immovable property, and as its owners to dispose of it; institute legal proceedings. Taking into account the analysis of rights and obligations of the IMF and the IBRD, it can be noted that, in addition to the status of a legal entity, they also have international legal personality. In addition to this, it should be mentioned that the international legal personality of the Fund and the Bank is derived from the legal personality of the states that have created them. States acquire legal personality from the moment they occur, and the IMF and the IBRD are endowed with the legal personality by the states and, therefore, it is limited since it is carried out only in a certain area of international legal relations.

At the same time, as rightly noted by O. Shibaeva and M. Potochnyy, the will of organizations is not identical to the state's will, it is independent. In their opinion, the fact that international organization has an international legal personality shows that there is an independent will of the organization. According to O. Shibaeva and M. Potochnyy, "the independent will of an international organization is a result of the harmonization (and not merge) of the will of the member states, which exists in parallel with their will (and not above it) and manifests itself in the various actions of the international organization carried out by the appropriate bodies, which implement the will of the organization" (Shibaeva & Potochnyy, 1988). Decisions that are taken by the bodies of the organization on certain issues of its activities also contain the independent will of the organization itself, not of the states. Therefore, resolutions bind states not as subjects that participated in their adoption but as members of the organization. This also affects differences in the consequences of failure to comply with such acts. If the manner in which acts of international conferences and bilateral acts are implemented can be characterized as voluntary, the implementation of acts of international organizations, in particular, the IMF and the IBRD, depends on the obligations defined in the charters of the organizations, the provisions of which member states must comply with.

Examining the legal nature of international financial organizations, it is worthwhile to focus on such a concept as "supranationality". Many scholars argue that organizations such as the IMF and the IBRD have features of supranationality (Dunas, 2010; Pali, 2009; Shumilov, 2014). Although this concept meets quite often, however, a clear definition of what is an international supranational organization does not exist. Thus, European scholars, Schermers and Blokker, point out 6 main features that the organization must possess in order to be supranational (Schermers & Blokker, 2011). Firstly, they indicate the possibility for the organization to make decisions that will be binding on member states. The second feature is that the decision-making bodies of the organization should not depend on the cooperation of all member states. That is, decisions must be taken by a majority of votes, or the decision-making body should consist of independent persons (who act in their personal capacity and not as representatives of the state). The third feature is the ability of the organization to make decisions that are directly binding on the citizens of the member states. Speaking of the fourth feature, scientists emphasize that the organization should have the power to enforce its decisions in the member states. The fifth feature is the financial independence of the supranational organization. And finally, the sixth feature is the impossibility of unilateral withdrawal from the organization. In the opinion of scientists in a supranational organization, member states do not even have the right to terminate its activities or change its powers without consent and cooperation with supranational bodies of the organization (Schermers & Blokker, 2011). At the same time, while pointing out all these features, the authors argue that currently there is no such international supranational organization. Even the European Union, having many supranational features, is not, in their view, such an organization but rather depends on the cooperation between its member states.

Considering the above mentioned, it cannot be said that the IMF and the IBRD have features of supranationality. Some scholars point out that the IMF has elements of supranationality since it has the authority to define national currency parities, to impose currency restrictions, to regulate currency devaluation and revaluation. Thus, by giving it such powers, member states transferred the IMF some of their sovereign rights regarding the implementation of monetary and financial policies (Dunas, 2010). However, we should not forget the fact that by the Jamaican Currency Agreement of April 01, 1978, the IMF Charter was amended, the essence of which was that member states were entitled to independently determine the rate of their currency. Consequently, it should be noted that although the IMF had some supranational powers in the time of its creation, the changes that were made to its Charter in the 1970s deprived it of those powers (Shperun, 2012).

In our opinion, the only international organization that has supranational features is the EU. This is manifested in the fact that, firstly, EU law is supreme over the national law of its member states. Secondly, EU law operates throughout the Union and has a direct effect in national legal systems. The principle of direct effect means that EU law grants subjective rights and obligations not only to member states but also directly to individuals and legal entities that can defend their rights guaranteed by EU law by submitting claims to the courts of the member states (i.e. within the framework of the national legal system). Thirdly, decisions in the EU can be taken not unanimously but by a majority of votes contrary to the position of individual member states. Fourthly, the EU has supranational institutions that are formed by international officials, who are independent of the government of the country that nominated them. In addition, the doctrine of EU law highlights the principle of direct application of EU law, according to which EU law becomes automatically, without any implementation procedures a part of the national law of the member states. However, this principle, as well as the principle of the direct effect of EU law, does not apply to all sources of EU law.

Thus, considering the issue of “supranationality” of international financial organization, one should take into account many aspects that will form the basis of this concept. If the manifestation of supranationality in the European Union can be followed by the above-listed features, the existence of supranationality in the IMF and the IBRD is questionable. Therefore, speaking of international financial organizations, it is necessary, nevertheless, to lean towards their intergovernmental character, rather than supranational.

4. The IMF, the IBRD, and human rights

When we talk about international financial organizations, the first concepts we mention are economic relations, credit and currency transactions, the balance of payments, devaluation, currency restrictions, etc. Almost never among these concepts you will find a mention of such usual one, but at the same time, far from the finance sphere, as human rights. And here comes the right question: what are human rights doing here? How does the IMF and the IBRD relate to this area since they are not involved in the protection of human rights? Even charters of these institutions do not contain any reference to human rights. Indeed, it is difficult to imagine the activities of financial institutions aimed at protecting the rights of national minorities or combating xenophobia and racial discrimination.

The answer to such seemingly easy questions lies in the internal features of the functioning and the legal status of the IMF and the IBRD. This is manifested, first of all, in the principles on which the activities of these organizations are based. One of such important

principles is the principle of sustainable development and the principle of good governance. Moreover, an important role is played by the fact that the IMF and the IBRD are specialized agencies of the United Nations that imposes certain obligations on them.

It is necessary to begin an examination of these organizations as specialized agencies of the United Nations, because in this lies the reason for their correlation with human rights and their need to comply with human rights. According to UN General Assembly Resolution 124 (II) as of November 15, 1947, the IBRD and the IMF are UN specialized agencies, which were the subject of appropriate agreements between these institutions. This means that they must comply with the provisions of the UN Charter, which are binding on them and have a force higher than their constituent documents (Papandreou, 2013; Horta, 2002). At the same time, the IBRD and the IMF, as specialized agencies, have been endowed, in accordance with Art. 57 of the UN Charter, with wide international responsibility in the field of economic, social, cultural, educational, healthcare, and other related fields. It seems necessary to look through Articles 59 and 55 of the UN Charter in terms of considering the correlation of the IBRD and the IMF activities with human rights protection. In accordance with Art. 59 of the UN Charter, specialized agencies are created “for the accomplishment of the purposes set forth in Article 55 of the Charter”. In Art. 55 of the UN Charter, among other purposes paragraph “c” refers to “universal respect for and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language, and religion.” Moreover, if we look at the purposes and principles of the United Nations, which are enshrined in Article 1 of the UN Charter, there in part 3, we can also see the focus on “promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.” Hereby, it can be seen that UN specialized agencies, such as the IBRD and the IMF, in their activities must also respect human rights, as explicitly stated in the UN Charter.

Some authors (Papandreou, 2013) argue that the IMF and the IBRD are bound by the provisions of the Universal Declaration of Human Rights, and although it is not legally binding, because it is adopted in the form of a resolution of the UN General Assembly but it is a source of customary international law. This in turn “creates an indirect obligation on the World Bank and the IMF to assist their Member States with fulfilling their obligations stemming from the UDHR” (Papandreou, 2013). Since the rules of customary international law are applied to all subjects of international law, consequently, these financial institutions must also respect the rights and freedoms set forth in the Universal Declaration of Human Rights. Speaking of other documents in the field of human rights such as, for example, the International Covenant on Civil and Political Rights (ICCPR) and the International

Covenant on Economic, Social and Cultural Rights (ICESCR), it should be noted that the IBRD and the IMF are also not parties to these treaties but they must do everything possible to ensure that the states they help do not violate the provisions of these documents. In addition, they must ensure that their activities do not have a negative impact on human rights (Klein, 1999).

The obligation to respect human rights implies the necessity for the World Bank to abandon projects that violate human rights or harm the local population. As Dana L. Clark notes, such processes should be viewed as “a natural outcome of moving toward sustainable development: projects that are inherently unsustainable will no longer be supported or subsidized by the public” (Clark, 2002).

Protection of human rights, among other things, means that not only the IBRD and the IMF will not violate human rights but that they will take all appropriate measures to prevent such violations from the third parties, such as governments or private companies. This means preventing the financing of authoritarian regimes, corrupt governments, and governments that systematically violate human rights. It is worth noting that the IBRD has often been accused of financial assistance precisely of such regimes that violated social, political, and economic rights of citizens of their countries. In this aspect, Dana L. Clark points out that the Bank has been repeatedly criticized for providing “an aura of legitimacy to regimes that are known to have committed serious violations of human rights or that have a reputation for corruption” (Clark, 2002).

These problems were of special importance both for the IBRD and for the IMF, as these financial organizations had to understand how they would act in a situation where the government of the country in practice did not implement a policy that would promote the development of the country and would not violate the human rights. The solution of this problem was to establish minimum standards for the proper execution by the government of the country of its powers. This was reflected in the application by the IBRD and the IMF in their activities the principle of good governance. Now, this principle is one of the fundamental standards of international economic law, because it has changed the policy of assisting the developing countries (Vitzthum, 2015). For a long time, this principle was formed within the framework of the IBRD and the IMF during the realization of their individual projects. The essence of this principle is the transparent and responsible management of human, economic, and financial resources, and their use for balanced and sustainable development. Good governance includes not only transparency and responsibility of state bodies but also such concepts as equality, rule of law, efficiency and effectiveness, consensus-based orientation, accountability, the fight against corruption, and the presence of civil society (Karpen, 2010; Vitzthum, 2015).

In particular, the rule of law consists in the existence of fair legislation and impartial law enforcement, which in turn requires independent courts, impartial and incorruptible police force. It also requires the observance and protection of human rights. Such an important feature as transparency means that decisions in the state are taken in accordance with the established rules and norms that should not be concealed from the public. This feature is manifested in providing information about decisions made and their implementation in an accessible and understandable form.

Thus, we see that the use of the principle of good governance promotes the IBRD and the IMF in achieving the goals set out in their charters. The amount of aid to states already depends not only on macroeconomic indicators or social factors but also on the existence of effective state institutions. In countries where there are serious problems with this, the likelihood of receiving support from financial institutions significantly reduces. So, there has been an expansion of criteria on the basis of which the effectiveness of the use of the World Bank funds by states is determined. Since 1998, the IBRD in the framework of the Country Policy and Institutional Assessments takes into account not only economic goals but also the availability of effective state institutions necessary for achieving these goals (Vitzthum, 2015). In 1997, the Executive Board of the IMF adopted guidelines on the role of the IMF in governance issues, in which particular attention was also focused on the role of good governance in the IMF's activities. In 2018, these guidelines were revised, because despite the progress made in this direction, the Executive Board noted that “there remained several areas in which the IMF's engagement on governance and corruption issues could be strengthened”.

In addition to these principles, which help the World Bank deal with the current state of affairs in the member states, the Inspection Panel was created within the Bank, which is a peculiar mechanism for protecting the rights of persons, who have been affected or may be affected by IBRD's projects. The essence of its activity is that every person or community, whose rights or interests have been violated, as a result of projects funded by the World Bank, may file a complaint about a violation to the Inspection Panel. It is an independent body that provides accountability at the World Bank, which enables affected people to protect their rights and recover damages when warranted.

The Inspection Panel was established in 1993 by the Resolution of the IBRD and the International Development Association. It can be said that the IBRD then made an unprecedented step since the Inspection Panel has become “the first institutional mechanism to allow non-state actors to directly hold an international organization responsible for its actions” (Passoni, Rosenbaum, Vermunt, 2017). What this means is, it has become one of those instruments that

protect the rights and interests of people affected by IBRD's activities.

Thus, the main financial organizations of the world are increasingly beginning to take human rights into account when realizing their projects. It is very important that the IBRD and the IMF have left in the past their "incoherent, counterproductive and unsustainable approach on human rights by integrating human rights due diligence into its policies and practices, embedding it in its technical advice, as well as its budget support and project lending" (Evans, 2016).

5. Conclusions

Having reviewed the peculiarities of the legal status and functioning of the IMF and the IBRD, it should be emphasized that from the moment of their establishment in 1944 and until this time they continue to be the main financial institutions that ensure the stability of the international monetary and financial system. Although they have sufficiently broad powers in accordance with their charters, it cannot be said that they have supranational nature. This conclusion can be drawn on the basis of the features of supranational organizations. This is, first of all, the ability of the organization to make decisions that are directly binding not only for member states, but also for citizens of member states, the ability to take decisions by a majority of votes, and the presence in the organizational structure of bodies that are completely independent of member states

governments. The IMF and the IBRD do not currently have such features. The only international organization that has the features of supranationality is the European Union.

At the present stage of functioning, the IBRD and the IMF are beginning to focus more and more on the field of human rights protection. This is evidenced, in particular, by the activities of the Inspection Panel within the IBRD, established back in 1993. As it deals with individual complaints about violations of rights or interests by projects funded by the IBRD, it can be regarded as a kind of "a human rights monitoring mechanism". The Inspection Panel provides an opportunity to examine independently and impartially violations that have been committed, and therefore, look from the side on the IBRD's activities, and on whether the Bank's policy concerning the respect of rights of citizens of the member states is correct.

Speaking about the activities of the IBRD and the IMF, it should be emphasized that they use the principle of good governance. It plays a key role in resolving the issue of providing financial assistance to states that can only be provided to a transparent and accountable government, which is free of corruption and will use money allocated to it for the intended purpose. Therefore, the functioning of these financial institutions is not only related to monetary, financial, and credit operations but it also affects seemingly such a far from them spheres as the protection of human rights and the fight against corruption.

References:

- Abbakumova, D. V. (2016). *Komitet Ministriv Rady Yevropy: mizhnarodno-pravova pryroda ta povnovazhennia: monohrafiia* [The Committee of Ministers of the Council of Europe: international legal nature and powers: monograph]. Kharkiv: Pravo. (in Ukrainian)
- Articles of Agreement of the International Monetary Fund (1945). Retrieved from: <https://www.imf.org/external/pubs/ft/aa/index.htm>
- Boshytskyi, Yu. L., & Dei, M. O. (2015). *Pravo mizhnarodnykh orhanizatsii i Ukraina: u skhemakh ta tablytsiakh* [Law of international organizations and Ukraine: in the schemes and tables]. Kyiv: Publishing "Lira-K". (in Ukrainian)
- Clark, D. L. (2002). The World Bank and Human Rights: the Need for Greater Accountability. *Harvard Human Rights Journal*, 15, 205–226.
- Dunas, O. I. (2010). Perspektyvy rozvytku mizhnarodnykh finansovykh orhanizatsii [Prospects for the development of international financial organizations]. *Almanakh mizhnarodnoho prava*, 2, 263–273. (in Ukrainian)
- Evans, J. (2016). The Record of International Financial Institutions on Business and Human Rights. *Business and Human Rights Journal*, 1(2), 327–332.
- Feibelman, A. (2013). Europe and the Future of International Monetary Law. *Transnational Law & Contemporary Problems*, 22, 115–152.
- Gartner, D. (2013). Uncovering Bretton Woods: Conditional Transparency, the World Bank, and the International Monetary Fund. *George Washington International Law Review*, 45(1), 121–148.
- Horta, K. (2002). Rhetoric and Reality: Human Rights and the World Bank. *Harvard Human Rights Journal*, 15, 227–243.
- IBRD Articles of Agreement (1945). Retrieved from: <http://www.worldbank.org/en/about/articles-of-agreement/ibrd-articles-of-agreement>
- IBRD Resolution 93-10/IDA Resolution 93-6 of 22 September 1993, "The World Bank Inspection Panel". Retrieved from: <https://www.inspectionpanel.org/sites/ip-ms8.extcc.com/files/documents/Resolution1993.pdf>
- Karpen, U. (2010). Good Governance. *European Journal of Law Reform*, 12 (1-2), 16–31.
- Klabbers, J. (2002). *An Introduction to International Institutional Law*. Cambridge University Press.

- Klein, P. (1999). Les institutions financières internationales et les droits de la personne. *Revue belge de droit international*, 1, 97–114.
- Kudas, I. B. (2015). Hrupa Mizhnarodnoho banku rekonstruktsii ta rozvytku: mizhnarodno-pravovi aspekty diialnosti [Group of the International Bank for Reconstruction and Development: international legal aspects of activity]. Proceedings of the *Aktualni problemy suchasnoho mizhnarodnoho prava: I Kharkivski mizhnarodno-pravovi chytannia, prysviacheni pamiati prof. M. V. Yanovskoho i V. S. Semenova (Kharkiv, November 27)*. Kharkiv: Pravo. (in Ukrainian)
- Labunska, A. V. (2015). *Pravovyi status Mizhnarodnoho Valiutnoho Fondu ta spivrobotnytstvo z Ukrainoiu* [Legal status of the International Monetary Fund and cooperation with Ukraine] (PhD Thesis). Kyiv: NAN Ukrainy, Instytut derzhavy i prava im. V. M. Koretskoho. (in Ukrainian)
- Lazebnyk, L. L. (2008). *Mizhnarodne finansove parvo* [International Financial Law]. Kyiv: Tsentri uchbovoi literatury. (in Ukrainian)
- Mac Darrow (2006). *Between Light and Shadow: The World Bank, the International Monetary Fund and International Human Rights Law (Studies in International Law)*. Hart Publishing.
- Malanczuk, P. (2000). *Akehurst's Modern Introduction to International Law*. London/New York: Routledge.
- Manger-Nestler, C. (2011). Impacts of International Law on the Restructuring of the Global Financial System. *Max Planck Yearbook of United Nations Law*, 15, 165–227.
- Moravetskiy, V. (1976). *Funktsii mezhdunarodnoy organizatsii* [Functions of the international organization]. Moscow: Progress. (in Russian)
- Palii, Ye. V. (2009). Pravovyi status uhod Mizhnarodnoho valiutnoho fondu ta Mizhnarodnoho banku rekonstruktsii ta rozvytku [The Legal Status of the Agreements Conducted by International Monetary Fund and International Bank of Reconstruction and Development]. Kyiv: NAN Ukrainy, Instytut derzhavy i prava im. V. M. Koretskoho. (in Ukrainian)
- Papandreou, M. (2013). The Human Rights Duties of the World Bank and the International Monetary Fund: From Theory to Practice. *Cyprus Human Rights Law Review*, 2(2), 241–257.
- Passoni, C., Rosenbaum, A., & Vermunt, E. (2017). Empowering the Inspection Panel: The Impact of the World Bank's New Environmental and Social Safeguards. *New York University Journal of International Law and Politics*, 49, 921–958.
- Ravallion, M. (2016). The World Bank: Why It Is Still Needed and Why It Still Disappoints. *Journal of Economic Perspectives*, 30(1), 77–94.
- Reus-Smit, C. (Ed.). (2004). *The Politics of International Law*. Cambridge: Cambridge University Press.
- Review of 1997 Guidance Note on Governance – A Proposed Framework for Enhanced Fund Engagement, April 22, 2018. Retrieved from: <https://www.imf.org/en/Publications/Policy-Papers/Issues/2018/04/20/pp030918-review-of-1997-guidance-note-on-governance>
- Schermers, H. G., & Blokker, N. M. (2011). *International institutional law: unity within diversity*. 5th rev. ed. Leiden: Martinus Nijhoff publishers.
- Shibaeva, E. A., & Potochnyy, M. (1988). *Pravovye voprosy struktury i deyatelnosti mezhdunarodnykh organizatsiy* [Legal issues of the structure and activities of international organizations]. Moscow: MGU. (in Russian)
- Shperun, Kh.V. (2012). Do pytannia pro nadnatsionalnist Mizhnarodnoho valiutnoho fondu [To the question of the supranationality of the International Monetary Fund]. *Chasopys Kyivskoho universytetu prava*, 2, 371–373. (in Ukrainian)
- Shumilov, V. M. (2014). *Mezhdunarodnoe finansovoe pravo* [International Financial Law]. Ed. 5th, rev. and add. Moscow: Mezhdunar. otnosheniya. (in Russian)
- The Role of the IMF in Governance Issues: Guidance Note (Approved by the IMF Executive Board), July 25, 1997. Retrieved from: <https://www.imf.org/external/pubs/ft/exrp/govern/govindex.htm>
- UN Charter (1945). Retrieved from: <http://www.un.org/en/sections/un-charter/un-charter-full-text/>
- UN General Assembly Resolution 124 (II), 15 November 1947. Retrieved from: https://www.unsceb.org/CEBPublicFiles/124_ii.pdf
- What is Good Governance? United Nations Economic and Social Commission for Asia and the Pacific. Retrieved from: <https://www.unescap.org/sites/default/files/good-governance.pdf>
- Vitzthum, Wolfgang G. (2015). *Mezhdunarodnoe pravo = Völkerrecht* [International law]. Ed. 2nd, rev. and add. [trans. from German]. Moscow: Infotropik Media. (in Russian)