Overseas Development Institute

IS AID CONDITIONALITY CONSISTENT WITH NATIONAL SOVEREIGNTY?

Douglas Zormelo

Working Paper 95

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Foreword

'Conditionality' is an ugly recent addition to the English language with which government officials in indebted countries have become all too familiar. In the context of this paper, conditionality refers to policy changes which an aid donor agency stipulates a government must undertake in order to obtain, or retain, access to the donor's financial support; it is an exchange of money for policy action. It arises most frequently in connection with the 'adjustment' programmes of the International Monetary Fund and World Bank but bilateral donors have made greater use of it in recent years.

This paper is a product of a research project underway in ODI, under my direction, which is examining the uses and limitations of donor conditionality as a way of bringing about improved economic policies in developing countries. It is planned to publish at least three Working Papers as outputs of this project, in addition to the main report which we hope to bring out as a book during 1997. A paper by Ana Marr, *Conditionality and South-East Asian Adjustment*, has already been published as ODI Working Paper 94 (July 1996) and a parallel study dealing with Latin American experiences by Ramani Gunatilaka is currently in preparation. There may also be a country case study of Kenya.

It is a long-standing complaint about the use of conditionality, particularly as practised by the International Monetary Fund and World Bank, that their policy stipulations infringe the sovereignty of the borrowing countries. This paper explores, with special reference to the IMF, whether that complaint can be sustained and how much force it has. It was written by Douglas Zormelo when he was attached to ODI as a Research Associate. He is now a Lecturer at the Legon Centre for International Affairs of the University of Ghana.

The project of which this paper forms part is funded by the UK Overseas Development Administration and ODI would like to express its gratitude for this support. However, neither ODA nor any of the many people who have helped us in this project are implicated in the conclusions arrived at.

Tony Killick
November 1996

Contents

Introduction

Policy and political system stipulations attached to loans and grants by international financial institutions and donors have been contentious in international financial transfers between countries since the beginning of large-scale financial flows in the nineteenth century (Kahler, 1992: 89). Reasons for the contentiousness of such conditionalities range from their contested efficacy to their social and political impact. They are also seen as an interference in the sovereign prerogatives of recipient governments by international financial institutions (IFIs), and donor governments and agencies (Gilpin, 1987).

It is the infringement of sovereignty that this paper seeks to examine. In the first instance what is sovereignty? Is it relevant in today's interdependent world? Do conditionalities infringe the sovereign prerogatives of recipients of international financial assistance? The paper deliberately adopts a narrow framework of analysis in order to disentangle the central issue of conditionality and the infringement of sovereignty from the wider normative arguments about the fairness or justness of the international financial system. It is therefore an analysis that looks at international relations as they are in practice rather than as they ought to be. For example, even though there is controversy and debate about sovereignty, this paper looks at how it is interpreted now rather than what it *should* mean.

Conditionalities

Conditionality has been defined succinctly by Kahler as 'an exchange of policy changes for external financing' (Kahler, 1992: 89). Conditionalities attached to the use of some of the resources of the International Monetary Fund, for example, imply that a member government must satisfy the Fund that it will use the credit to support a programme of domestic policies that are designed to correct payments deficits (Killick, 1984). Even though the policies that are demanded for the use of the Fund's resources vary from case to case, they are invariably made up of a package of macroeconomic policies which borrowing countries are expected to implement. These include 'restrictions on monetary growth, and public expenditure, and often include devaluation, increases in taxes or public utility prices or wages control' (Mosley, 1991: 66).

The evolution of IMF conditionality

At the end of the second world war and during the period leading to the formation of the IMF, the United States of America, as the most likely net contributor to the Fund, argued strongly in favour of the organisation having 'wide discretionary and policing powers' and of its having the 'influence and control over central banks of

the member countries, that the central banks exercise over other banks in their own countries' (Dell, 1981: 1). Potential recipient countries, such as the United Kingdom, on the other hand were not in favour of giving the new organisation such powers. Thus apart from the United States, all the other states involved in the negotiations were in agreement about placing limitations on the ability of the Fund to scrutinise the economic policies of its members (ibid.). The type of conditionality, which would have been implied by the American negotiating position on the issue of the powers of the new organisation was therefore not stated explicitly in the original Articles of Association of the Fund.

Even though the organisation was not given the wide ranging powers advocated by the United States of America, the Articles of Agreement laid out the conditions under which the resources of the Fund were to be used. Articles 1(v) and V, Section 3 of the Agreement formed the basis for such conditions. Article 1(v) provided that the resources of the Fund should be made available under 'adequate safeguards'. Article V Section 3(a) also stated that:

> The Fund shall adopt policies on the use of its general resources, including policies on stand-by or similar arrangements, and may adopt special policies that will assist members to solve their balance of payment problems in a manner consistent with the provisions of this agreement and that will establish adequate safeguards for the temporary use of the general resources of the Fund.

Thus conditionalities became part of the practice of the Fund in its lending policies to recipient countries. It was however given explicit legal status in 1969 in the first amendment to the Articles of Association in Article V, Section 3(c) and (d). Further, on March 2nd 1979, the Executive Board took a decision entitled 'Use of Fund's General Resources and Stand-By Arrangements' which dealt with conditionality and other financial activities of the Fund (Gold, 1979). The Guidelines, as they are called, permit the setting of preconditions in which a member 'may be expected to adopt and carry out a program consistent with the Fund's provisions and policies' (Paragraph 7 of the decision quoted in ibid.: 28). It also allowed the setting of 'performance criteria . . . that are necessary to evaluate implementation of the program with a view to ensuring the achievement of its objectives'. The criteria should, according to the document, be confined to (i) macroeconomic variables, and (ii) those necessary to implement specific provisions of the Articles or policies adopted under them' (Paragraph 9 quoted in ibid.: 30). It also stated that 'performance criteria may relate to other variables only in exceptional cases when they are essential for the effectiveness of the member's program because of their macroeconomic impact'.

Conditionalities are not limited to IFIs alone. In recent years political system stipulations have been increasingly attached to aid by the western democracies. Good governance, or democracy, is now an accepted attachment to much bilateral aid. Its acceptability as a condition has become more and more prevalent in the

transfer of financial assistance and aid since the collapse of socialism in the former Soviet Union and Eastern Europe and the dominance of western democracy as the main political ideology of international society. The prevalence of political system conditionalities has also been facilitated by what is perceived as the link between the lack of democracy and incompetence and waste of resources by developing countries whose governments are predominantly unaccountable military governments and one-party states (Healey and Robinson, 1992: 94). Even though there is as yet no clear evidence to suggest that western democracy makes development goals more achievable (ODI, 1994), the *a priori* assumption is that since most donors and most developed and prosperous countries have democratic governments, then there must be a link between democracy and development. This issue is contentious and is one of the current issues at the heart of development studies and the political economy of international finance.

Thus, since the collapse of the Soviet Union, conditionalities attached to aid and international financial assistance by donor countries and IFIs have become more and more political than the economic and project-based conditionalities of past decades. The collapse of the Soviet Union reduced the strategic considerations in the disbursement of aid for the Great Powers. Aid that helped to maintain spheres of influence during the Cold War and after were no longer quite as relevant, except in a very few cases. The major significance of the demise of the Soviet Union and the Communist countries of eastern Europe was that it gave the western countries the basis to claim that market-oriented economies and pluralism are interdependent ingredients that were necessary for the viability of economies and states.[1] A monolithic ideology could be promoted without criticism from the Soviet Union whose successor states were themselves clamouring for political democracy and capitalistic methods of operation.

The collapse of European Communism also undermined the practice of socialism around the world, with political parties and leaders rapidly beating a path of retreat and seeking to put as much distance between themselves and socialism as they could without discrediting themselves. Aid and the conditionalities attached became a major method of promoting the apparently triumphant western ideology. 'Good governance' became the catchphrase for inducing the rest of the world to adopt pluralism.

Good governance had a decidedly explicit political agenda. Though previous aid programmes had political attachments, the consensus in favour of good governance suddenly achieved among donors, IFIs and commercial banks was unprecedented.

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[1] Douglas Hurd in June 1990 stated the British position by affirming that 'Economic success depends to a very large extent on effective and honest government, political pluralism and, . . ., observance of law, freer and more open economies . . .', ODI Briefing Paper (January 1992, Box 1, p. 1).

The unequivocal stipulation of political systems could not be denied. The British Overseas Development Administration's definition of good governance gives an example of the extent to which donors were beginning to use finance as a leverage to determine the political system of other states. To the ODA, good governance consisted of three elements (Hewitt and Killick, 1996):

> **Competence**: sound economic policies, effective use of resources, absence of corruption, avoidance of excessive military expenditure.
> **Legitimacy and accountability**: freedom of expression, political pluralism, broad participation in the development process.
> **Respect for human rights and the rule of law**

These are issues that lie at the heart of sovereignty.

Moving from political stipulations by governments, an examination of recent publications of IFIs indicate a more direct venturing into territories that verge on the political. The World Bank, for example, defines governance as 'the manner in which power is exercised in the management of a country's economic and social resources for development' (1994: xiv). It identifies three components of governance: (i) the form of political regime; (ii) the process by which authority is exercised in the management of a country's economic and social resources for development; and (iii) the capacity of governments to design, formulate, and implement policies and discharge functions. Other multilateral lending institutions define governance in similar terms, except the Inter-American Development Bank which gives special emphasis to the modernisation of public administration (ibid.).

From the definition of conditionalities, and their evolution, it can be seen that they *appear* to infringe the essence of the independence of governments and their ability to rule without interference. However, before such a conclusion can be reached we have to look at what sovereignty is.

Sovereignty

Sovereignty, like most concepts in international relations, is fraught with controversy. As an eminent international lawyer observed, 'there exists perhaps no conception the meaning of which is more controversial than that of sovereignty. It is an indisputable fact that this conception from the moment when it was introduced into political science until the present day, has never had a meaning which was universally agreed upon' (Oppenheim quoted in James, 1986: 2). Despite this controversy, sovereignty is one of the regulating principles that more or less guides the behaviour of states in international society. It is generally understood to 'signify the constitutional independence of other states' (Jackson, 1990: 32). 'States' here refers to those entities that have been defined by Article 1 of the 1933 Montevideo Convention on the Right and Duties of States as persons

in international law which possess permanent populations, defined territories, governments, and the capacity to enter into relations with each other. States assert in relation to the territory and population which they comprise, internal sovereignty. Internal sovereignty means the 'supremacy over all other authorities within the territory and population' (Bull, 1981: 8). States assert in relation to other states, what is called external sovereignty. By this is meant the independence of the state of outside authorities (ibid.).

Internal and external sovereignty amount to a collection of attributes which together imply constitutional independence: 'legal equality of states, mutual recognition, jurisdiction, non-intervention, making and honouring of treaties, diplomacy conducted in accordance with accepted practices, and in the broadest sense a framework of international law of war which attempts to confine even violent conflict between states within a rule-bounded playing that protects non-combatants and other spectators' (Jackson, 1990: 35).

The above definition of sovereignty has obtained since the seventeenth century, even though how it is acquired has changed. Before the First World War, sovereignty was earned, especially in the seventeenth century when nation-states in Europe were in the process of being articulated. This implied that entities wishing to be regarded as sovereign states had to be able to prevent interference by other states and to substantively exercise authority over all other centres within that territory. Hedley Bull, for example, asserted that a 'political community which merely claims a right to sovereignty (or judged by others to have such a right), but cannot assert this right in practice, is not a state properly so-called' (Bull, 1981: 8).

Decolonisation of territories in Africa, Asia, Latin America and the Pacific has created a slightly new meaning to the term. Whereas it was assumed in the classical sense that sovereignty implied the capacity to be independent and supreme, the new states usually lacked the wherewithal to exercise sovereignty in a substantive sense. Initially, they existed as sovereign states essentially through international recognition rather than as *de facto* sovereign states (Jackson and Rosberg, 1982). In other words, sovereignty was endowed automatically by international society once a colonial territory emerged from external domination. Even though as an update to this view we have asserted that states in Africa no longer exist simply because of external recognition but because of the gradual transfer of allegiance from the tribe to the state and the ability of governments to centralise authority, most states in the developing world are not fully articulated in the European sense (Zormelo, 1994). They are not able to assert sovereignty in deed. Despite their inability to assert their sovereignty, developing countries are regarded as sovereign.

The low capacity of these relatively new states, especially in Africa, has caused some to use the distinction, negative and positive sovereignty rather than external and internal sovereignty as a way of assessing the reality of independence and jurisdictional supremacy of the states or governments which represent them. The

use of this distinction is itself not clear, however. Whereas De Lupis (1987: 13) uses it as a distinction between the aspects of sovereignty that can be headed under independence ('the right to remain free from foreign interference and to denounce certain unequal treaties') and those under self-determination ('the right to secede from colonial rule, the right to exercise supreme power in the territory, the right to adopt a new constitution and the right to a representative government'), Jackson (1990: 29), on the other hand, goes further to assert that the positive aspects presuppose 'capabilities which enable governments to be able to be their own masters: . . . a substantive rather than a formal condition'. To him:

> A positively sovereign government is one which not only enjoys rights of nonintervention and other international immunities but also possesses the wherewithal to provide political goods for its citizens. It is also a government that can collaborate with other governments in defence alliances and similar international arrangements and reciprocate in international commerce and finance (ibid.: 29).

Positive sovereignty from the above is therefore not so much a legal attribute but a political attribute if by political is meant the sociological, economic, technological, psychological, and other similar wherewithal to declare, implement, and enforce public policy both domestically and internationally (ibid.).

The dilemma of modern international relations is that a majority of sovereign states do not have the means or capacity to substantiate their independence. This tends to be translated into the practice of international relations. Even though according to international law all states are equal, the practice of international relations sometimes contradicts this legal attribute. Thus some commentators have posited that independence based on sovereignty should not be regarded as complete or total. This, they point out, is because the practice of international relations and the terminology used in discussing the subject, such as 'Great Powers', imply a quantitative rather than a qualitative concept (James, 1986: 166). In his discussion of the usages of the term, James cited a leading British professor of politics and specialist in international relations in the discussion of an international issue as saying, 'let not the issue be fuddled by shibboleths and phantasms' (P.A. Reynolds, *The Times*, 18 February 1971, quoted in ibid.: 3). Another distinguished modern historian was quoted as saying the use of the term sovereign equality was an instance of 'how we encumber our thinking with gibberish phrases' (Thompson cited in ibid.: 3). Yet another commentator, this time an American professor of law at Yale urged people to 'forget all that abstract garbage' (Leff quoted in ibid.: 3).

Though these quotations are dated, the controversies and views on sovereignty that they express have not changed. The difficulty is exacerbated by the fact that there is no international constitution that can be consulted on the meaning of the word 'sovereignty' (ibid.: 17). The United Nations Charter which is the closest to an international constitution does not shed much light on the issue either. All it says is that the organisation is based on the sovereign equality of its member states

(Article 2, paragraph 1, referred to in ibid.). As James further points out, international law does not define sovereignty and what it is. What international law does is to give rise to what are called sovereign rights. International law presupposes sovereignty (ibid.: 40).

An argument that could be used to counter the views expressed by the commentators cited above would be that such views are from people who have taken the existing structure of international society as given, and who seem to endorse the dominance of some states by others. It could also be argued that to accept such views of international inequality that those comments imply would, among other things, be an endorsement of 'survival of the fittest' in international society. Valid as these arguments are, we will not pursue them any further because of the essentially normative nature of their premises.

The interesting thing about the attributes of juridical sovereignty is that it is one of the inherited attributes of the international system that developing countries cling to. By stressing equality in international relations, third world countries have a comfortable majority in the United Nations General Assembly. Thus even though they are often critical of the rules governing international interactions, sovereign equality gives them a leverage in certain instances and protects them from and regulates their relations with the more powerful and advanced countries and from each other.

The dilemma for international society about the issue of sovereignty since the developing countries gained independence is that, whilst insisting on their sovereign rights as equal partners in international interactions, they have also demanded preferential treatment because of their level of development and hence their lack of the wherewithal to reciprocate in international relations. The arguments for a New International Economic Order are based on this central argument about the *de facto* inequality among the members of international society. Developing countries have managed to get recognition for their difficulties through such forums as GATT agreements on trade preferences and other preferences granted by developed countries, as well as the preferential treatment given by the European Union to the African, Caribbean and Pacific States under the Lomé Convention.

Even though such preferences have always been referred to as non-binding on the states offering them and as temporary measures, some have argued that by demanding preferential treatment developing countries have accepted a subordinate position in international relations (Mayall, 1979). This argument would, however, seem to imply that because individuals in society have varying capabilities, some were more equal than others. To be fair to those who argue that way, they are not saying that non-reciprocity implies inequality before the law but rather that it creates a *de facto* subordination for those who demanded it. Be that as it may, society does tend to make provisions for its more vulnerable members in order to avoid a situation where those who by virtue of various circumstances were more

capable than others would not take advantage of the less fortunate. Even though the relation between states is not the same as those pertaining within states, the philosophies underlying the demand for preferences and non-reciprocity are similar to those underlying the demand for social provisions within a state.

Another argument used to support a new international order is that since many of the rules guiding international interaction were formulated before they became independent their interests were not and could not have been taken into account. There are therefore many instances in which their sovereignties are infringed. An example of such infringement is claimed to be the linking of conditionalities to financial aid by the developed countries and IFIs.

As was pointed out earlier, the concept of sovereignty is a controversial one and states are able, depending on the circumstances, to attribute various meanings to it in order to promote their course. It has also been seen by some scholars as obsolete (Morgenthau, 1964: 116) and by others as factually inaccurate (Falk, 1963: 29), especially in today's interdependent world. Before we go on to examine the issue of whether sovereignty is infringed by conditionalities it might be helpful to examine the contention that sovereignty in modern international relations is of little relevance because of the high level of interdependence of states in international society today. It will then be worth asking if developing countries are clinging to outdated concepts as an excuse for not wanting to implement unpalatable policies or as a prop for their lack of clout in their relations with the more developed countries of the west.

Interdependence and sovereignty

Interaction in international society today is said to be more intense than it has ever been. Economic relations, such as trade, involve large amounts of money. Inflation or depression in one industrial country tends to be transferred to others, whilst slow growth in the industrial countries tends to be reflected in the lower foreign exchange earnings of developing countries. The monetary policy of one country is quickly counteracted by the authorities in other countries in order to avoid unwanted repercussion in their own economies. Interdependence has therefore resulted in interpenetration of economies to the extent that policies of governments affect the economic and social well-being and political viability of governments in other countries.

Such interpenetration has resulted in both cooperation and conflict in relations between states. The impact of the policies of one state on other states has called into question the implicit interpretation of the state as an impenetrable entity. Sovereignty in modern times is therefore regarded as a misnomer by some and as archaic by others. To what extent does the need to adjust and even formulate policies to anticipate those of other countries impinge on the sovereign prerogatives

of states? To what extent does it constitute the erosion of sovereignty and make it less salient in the interaction of states?

Increased interdependence in international relations is a debatable issue. Some have alleged that interaction in modern times has not yet equalled the period before the First World War, a time posited to be that during which free trade was supposed to have been at its highest. Be that as it may, various developments have increased the impact that states have on each other. Increased technology and communications means policies formulated in one country are immediately known to other governments and to financial centres around the world. The impact of an interest rate increase in Germany, for example, is immediately felt in the currency markets of London, New York, Tokyo, and Hong Kong. Legal arrangements, such as GATT, regulate trade policies of states and effectively determine what states can and cannot legally do. The next logical question, therefore, is whether sovereignty is undermined by increased interpenetration of the state?

The increased impact of one state on another, because of interdependence, to a certain extent does alter the way in which sovereignty is viewed. Whether that means the doctrine is anachronistic or not is a more debatable issue. From an economic perspective, sovereignty is not absolute. In the classical sense, sovereignty implies that a ruler or government is master in its own state, and therefore should not be subject to rules made and enforced by others. Governments or rulers are in this sense freed from the observance of the law – *princeps legibus solutus* (Seid-Hohenveldern, 1992: 21). However, because states interact, certain rules and regulations need to be observed to maintain peace and order in their relations with each other. However, such rules cannot be the rules made by any individual state. By necessity such rules must be made by all states participating in the relations they are supposed to govern. The fact of interdependence therefore has resulted in a discarding of sovereignty in the classical sense and has been replaced by the concept of relative sovereignty. From the perspective of increased interdependence, therefore, a state is regarded as sovereign if 'its acts are not subject to any other rules than those of international law' (ibid.: 22).

It can be concluded from the concept of relative sovereignty that interdependence has altered the sense in which sovereignty is viewed from the classical view in which war and power were salient instruments in the pursuit of foreign policy, an era when a realist or Hobbesian perspective prevailed, to a position where relations tend to be governed by the need for cooperation and the recognition that rules, norms and the institutions that have evolved to guide international relations should be observed.

Sovereignty, and the rules and norms that guide it, is an institution which underpins the existence of international society. Changes in its interpretation therefore imply a fundamental change in the structure of international relations (Keohane, 1989: ch. 1, footnote 10). International relations in the Grotian perspective, where rules,

norms and institutions guiding the behaviour of states towards each other will be changed (Bull, 1981). The likely effect would be a reverting to the situation which prompted Hobbes to imply that power was the crucial quality required of an effective sovereign in his relations with other sovereigns and with his population. The vulnerability that has resulted from interdependence will, in such an instance, be exacerbated by a situation where states are free to interfere in the internal affairs of other states. It will also result in increased protectionism, as states try to avoid the negative impacts of interdependence.

Increasing interdependence, rather than making sovereignty obsolete makes it even more necessary as a regulatory device in international society. Without the *de jure* attributes of sovereignty, international relations will be anarchic. Strong and powerful states will do as they please in all circumstances and power relations will replace the predominantly cooperative mode of international interaction. It can indeed be postulated that without the concept of sovereignty, and the attributes it confers, there can be no international society because the various institutions that guide the relations between states will be meaningless. It will, for example, be impossible for an aggrieved state to take another to court if international society has not conferred legal personality on the sovereign state. From this perspective, the point can be made that even though interpenetration of states by each other and by other actors in international society is on the increase, sovereignty remains an important bedrock in providing order in relations among states. Far from being a phantasm, sovereignty remains crucial to the survival of the international system as we know it today. Even though the attributes of sovereignty have been modified by norms, rules, conventions, laws and institutions they nevertheless remain relevant. Sovereignty reduces the uncertainties that exist in a society with no central authority and provides a certain amount of predictability for the members and other actors within it.

Having considered what sovereignty means and how it has changed in modern times in relation to international law and increasing interdependence, we are now in a position to address the question whether conditionality infringes sovereignty.

Sovereignty and conditionality

The concept of relative sovereignty stipulates that states should obey the international laws that they formulate or accede to. These include those that bring international organisations into being. For an international organisation to infringe the sovereignty of its members it has to have gone beyond the powers given to it by its members. In other words, it must be acting *ultra vires* its Articles of Agreement (Meessen, 1986: 117–129). As was pointed out earlier, conditionality has been part of the practice of the IMF in its attempt to regulate the international monetary system and especially the temporary alleviation of balance-of-payments difficulties. It was also pointed out that in addition to conditionality being given

explicit legal status in the first amendment to the Articles of Association, the guidelines on conditionalities of the Executive Board in 1979 spelt out the type and form of conditionalities in order to regularise their application.

The crucial issue is whether the guidelines of the Executive Board which spelt out the types of conditionalities that can be applied by the IMF can be taken as having the legal status that make their implementation fall within the purview of the Articles of Agreement and hence make them legal.

The legal norms that constitute the law of the Fund can be categorised into three classes, according to the parties and instruments by which they have been created (Gold, 1980). These are: (i) the Articles of Agreement, (ii) the By-Laws, Resolutions, and other decisions of the Board of Governors, and (iii) the Rules and Regulations of the Executive Board. In addition to the three categories above can be added the decisions and directives of the Managing Director issued within his authority, including those issued to the staff.

The norms are hierarchical, with the provisions of the Articles of Agreement being paramount. Decisions of the Board of Governors must be consistent with the Articles. The Executive Board's decisions must also be consistent with those of the Articles and the actions of the Board of Governors. Decisions of the Managing Director must be consistent with the Articles, the actions of the Governors and of the Board (ibid.).

The decisions of the Executive Board, especially those that are formulated in general terms, tend to be important in the evolution of the norms of the Fund. Thus a decision such as 'Use of Fund's General Resources and Stand-By Arrangements' was a substitute for an earlier general rule and also an 'expression of practices that the Fund followed for years' (ibid.: 10). Such decisions tend to be incorporated into the Articles when they are amended.

The legal status of decisions differs according to those that are made to facilitate the implementation of the obligations of the Articles of Agreement and those that provide guidelines and recommendations for conduct. Whereas a failure to abide by the former constitutes an automatic breach of obligations, noncompliance with the later does not.

From the above, it is clear that decisions that regularise and facilitate the implementation of the Articles of Agreement would fall within the legal boundaries of the Fund's operations. Since the Guidelines were made with such an objective of facilitating the implementations of conditionalities which had been given legal status in the first Amendments to the Articles their legal status is equal to that of the Articles.

The conclusion can be made that the Fund does not act *ultra vires* its Articles when

it sets conditions for its loans, so long as such conditions fall within the accepted parameters. To the extent, therefore, that developing countries have agreed to join the Fund on a voluntary basis, it can be said that they did so knowing what their obligations under the Articles were. The keeping of promises, *pacta sunt servanda*, is an international moral principle which guides the behaviour of states in international society, just as it guides the action of independent adults in civil society who are expected to be responsible for their debts. Thus, insofar as states must be responsible for their debts and recipient countries also accept that the IMF works on the basis of setting conditions to ensure that states are able to repay what they owe, borrowers must comply with the conditions of the Fund, as long as such conditions do not go beyond the authority of the organisation.

If, as members of the Fund, they are unwilling to accept the conditions, they are entitled not to take the assistance being offered. The difficulty for the developing countries is that there are often no alternative sources of finance. It is also the case that where such alternatives exist, access to them is often dependent on the 'seal of approval' of the IFIs. Another point which follows from this is that developing countries do not negotiate with the IFIs from a position of equal strength. Usually the desperate positions of these countries make them willing to adopt the policies that are recommended. Despite the lack of alternatives, their weak negotiating positions and their desperation, developing countries have nevertheless often rejected international financial assistance because of the conditions that have been attached to them, or failed to adhere to the agreed terms of the assistance (Kahler, 1992: 100). Thus governments accept conditionalities voluntarily.

From a strictly legal perspective, there is no basis for alleging the infringement of sovereignty. Some would indeed argue that conditionality is to a certain extent necessary because of the revolving nature of the resources. Unless the Fund sets the conditions that will ensure the repayment of the loans it makes, it will be difficult for it to meet its commitments to others who might be in need and to its creditors. Indeed, the occurrence of arrears in interest and amortisation payments during the 1980s has made the repayment of the Fund's loans an increasingly important criterion for deciding the viability of credits (Killick, 1995: 21).

Even though the arguments used by the United States of America in favour of a strong supervisory role for the IMF during the discussions leading up to its formation implied a mainly pragmatic fear of burdening the US economy, and the use of the Fund's resources for purposes other than those for which it was to be set up, not all conditions for aid and loans have resulted from such fear. It has not been uncommon for dominant powers to attempt to promote what they perceive as their national interests by steering recipient countries in preferred directions by means of policy stipulations through the IFIs. As Kahler, for example, noted (1992: 89), World Bank lending to Argentina in 1988 was a result of United States pressure. It is also the case that the industrialised countries governments '. . . pressure the IFIs to reach an agreement with a particular country (often a large

debtor) because of concern over national financial institutions or foreign policy objectives'. The influence of the developed countries on the IFIs is therefore high, and raises questions about the independence and neutrality of their conditionalities.

The preponderance of the developed countries in these organisations mean the agenda is usually that which conforms to the preferences of the more powerful members. This however does not change the conclusion we have arrived at so far concerning the issue of infringement of sovereignty. As was pointed out earlier, the question being considered in this paper is not whether the rules are just, or voting unfair, but whether the rules as they stand infringe the sovereignty of recipients. The answer is that it does not. Even though certain countries, such as the US, can and do influence the decisions of the Fund and other IFIs in determining who gets loans, that in itself does not imply an infringement of sovereignty of those who receive such loans.

The complaint is sometimes made that the IFIs treat developing countries less favourably than they do the more advanced countries. This complaint is difficult to settle at the present time because developed countries have stopped borrowing from the Fund. This leaves the developing countries as the main recipients of the resources of the Fund. In the past, when both the developed and developing countries borrowed from it, the United Kingdom in November 1967 was given easier access to funds than the developing members (Dell, 1981: 12). This raised a lot of controversy. The question, though, is whether the Fund, at its discretion, felt the UK did not, by virtue of its economic problems, need the same level of stringency of conditions as had been applied to other states or whether the UK was being favoured. Whatever the answer was, the occasion resulted in much criticism of the Fund's behaviour. The Fund, however, decides on the stringency of the conditions that it will set at its discretion, depending on the country it is lending to.

The criteria for deciding the stringency of conditionalities are, however, not clear. It is also true that the impact of the IMF and the World Bank tends to be highest in small countries where state capacity is small and local technocratic teams are stretched to the limit, e.g. Ghana, Jamaica, and the Zambia (Kahler, 1992). Furthermore, it is valid to say that the authority to attach policy goals to loans by the IMF and the World Bank are delegated to them by the more powerful members of these organisations who formed the institutions (ibid.: 89–90).

Additionally, it is correct to say that developing countries are often regime takers and have no alternatives to the IFIs (Haggard and Moravcsik, 1993). The control of desperately needed resources by the financial institutions and their influence over access to commercial financial resources through their 'seal of approval' give them a leverage over governments in the developing countries which would not be acceptable to the developed countries.

However, it is not valid to lay the blame for this at the door of the IFIs whose very existence is dependent to a large extent on the subscriptions of the richer countries who expect, quite reasonably, that resources lent to countries should be paid back. It is also worth remembering that the IFIs got their current influence over developing countries' access to commercial loans because commercial banks would no longer lend to them as a result of their high level of indebtedness.

From the above we can conclude that, even though sovereignty is not infringed, the IFIs do tend to intrude in the internal affairs of developing countries in a way that is reminiscent of the fears expressed by the United Kingdom's delegation at the negotiations leading to the formation of the IMF. Things being as they are in international relations, perhaps what is sauce for the goose is not really sauce for the gander.

Though we have concluded that conditionalities do not infringe sovereignty, the changing nature of conditionalities has given rise to concerns over the tying of aid to *political* stipulations. Bilateral aid has always been used extensively by donor governments to promote political, military and commercial interests. Intentions to establish spheres of influence, obtain economic advantage or bolster military security have always been major criteria for aid disbursement (Gilpin, 1987: 312). The new element is that, whereas this agenda was implicit in the past, political system stipulations have become an accepted form of conditionality. Do these new forms of conditionality infringe self-determination?

The changing nature of conditionalities and sovereignty

As we noted earlier, the definition of good governance by the United Kingdom and of governance by the World Bank touch on the very essence of sovereignty and the issue of self-determination. As the Declaration on the Principles of International Law concerning Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations (resolution 2625(xxv) of 1970) states:

> By virtue if the principles enshrined in the Charter of the United Nations, all peoples have the right to freely determine, without external interference, their political status and to pursue their economic, social and cultural development, and every state has the duty to respect this right in accordance with the provisions of the Charter.

On the face of it, political system stipulations are contrary to the rules laid down to guide interactions between states. No state ought to be able to determine the political structure of another, and to attempt to do so is an interference in the internal affairs of another sovereign state. It is not only the stipulation of political structures which implies interference in the sovereign prerogatives of a state but also attempts to determine the economic, social and cultural structure of a state.

From the above, can it be concluded that good governance as a conditionality for financial assistance infringes the sovereignty of recipients? Again the answer would have to be determined by whether recipients are coerced into receiving assistance. The fact is that they are at liberty to refuse the assistance if the conditions are not acceptable.

There is also another more theoretical perspective which makes the answer to this question not as clear-cut as the UN resolution would imply. The question of when one state can intervene in another's internal affairs has been debated since the nation-state became the main unit of analysis in international relations. This was especially so in the period after the French revolution. At the time, some advocated that states could intervene against a revolutionary regime elsewhere. Edmund Burke in his *Letters on a Regicide Peace* claimed that the regime established in France represented a public nuisance, which was a standing threat to the established governments throughout the continent ('The Right to Intervene against a Public Menace' in Luard, 1992: 175–180). Others, such as J.S. Mill, argued that intervention could be justified if it was carried out in order to prevent a tyrannical or alien government. To him, a government could be challenged on its legitimacy and its right to rule if it was non-representative because it was imposed rather than willingly accepted. The limitation on this, however, was that intervention to overthrow an unjust government could only be justified when an oppressed people were themselves willing to fight for their own freedom (ibid.: 180–85).

The ideological and human rights bases for intervention which these two perspectives represent have been used as a justification for intervention by states in the internal affairs of others. America's interventions against Cuba, Nicaragua, and the Dominican Republic are examples of ideological intervention, whilst Mill's position is echoed by the *Vienna Declaration and Programme of Action* adopted in June 1993 by the World Conference on Human Rights that:

> Democracy, development and respect for human rights and fundamental freedoms are interdependent and mutually reinforcing. Democracy is based on the freely expressed will of the people to determine their own political, economic, social and cultural systems and their full participation in all aspects of their lives. In the context of the above, the promotion and protection of human rights and fundamental freedoms at the national and international levels should be universal and conducted without conditions attached. The international community should support the strengthening and promoting of democracy, development and respect for human rights and fundamental freedoms in the entire world (United Nations, 1993: Article 1, para. 8).

From the above it can be seen that there are certain instances where intervention may be tolerated in international relations. However, as the Declaration points out, the promotion of human rights and self-determination should not be 'construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent

states conducting themselves in compliance with the principle of equal rights and self-determination of peoples and thus possessed of a government representing the whole people belonging to the territory without distinction of any kind (ibid.: para. 2). So while intervention may be justified on the grounds of human rights, the case of ideological intervention is more to do with power politics than with norms of international behaviour.

To return to the original question, to what extent do political conditionalities interfere in the internal affairs of recipient states? This question, in our view, leads to another: who is sovereign – the state, the government or the citizens?

Governments are not by themselves sovereign. It is the state that is sovereign. Government as a representative of the state derives its power, legitimacy and authority from the citizens. As Article 21, paragraph 1 of the Universal Declaration of Human Rights states: 'Everyone has the right to take part in the government of his country directly or through chosen representatives . . .' It also states in paragraph 2 that:

> The will of the people shall be the basis of the authority of governments; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

It can be posited that where a government is imposed and is tyrannical, international society can attempt to remedy the situation. The reasons given by donors for not disbursing aid to certain countries are based on what is seen as abuse of power. Though the pronouncements tend to sound hypocritical, they can nevertheless be justified under international law and conventions. President Mitterand, for example, implied in a speech in June 1990 that France was not prepared to assist dictatorships. The German government stated five criteria for granting aid: respect for human rights; popular participation in the political process; the guarantee of legal security; a market-friendly approach to economic development; and the recipient government's commitment to development. Japan is beginning to stress human rights, democracy and environmental conservation.

The conclusion can be made from the above that where unaccountable and imposed governments are careless with the use of a country's resources, and do not respect the rights of the citizens, and the citizens themselves are clamouring for change, then political conditionalities can be justified if the aim is to correct the situation.

The will of the people is therefore of crucial significance in this matter. Though international relations are between states, this does not imply that governments are at liberty to do as they like in their countries. The existence of tyrannical regimes, such as those that existed under Amin of Uganda and Bokassa of the Central African Republic, could not be justified on the basis of self-determination. Neither

can the lack of transparency, corruption and mismanagement be allowed to continue when loans that are contracted are the responsibility not just of incumbent governments but also of their successors and of future generations. The call for democracy cannot be dismissed on the grounds that there is no definite link between it and economic development. Whether there is a link or not should not be an issue because pluralism can be an end in itself, especially since military governments and one-party states have not proved that they are better than other forms of governments through substantive economic, political or socio-cultural development.

Moving from the political stipulations of governments to ask whether IFIs' political conditionalities infringe the sovereign rights of recipient states, the answer will still be that unless they are acting *ultra vires* their Articles of Agreement, they are acting legally. Thus, whether political conditionalities infringe sovereignty or not depends on how the IFIs define governance, and also on the fact that governments can refuse or accept the loans.

In identifying the three components of governance quoted earlier (p.10), the World Bank noted that the first aspect, the form of political regime, is outside its mandate. The Bank has, therefore, concentrated on the other two aspects of governance which it identified, i.e. the process by which authority is exercised in the management of a country's economic and social resources for development; and the capacity of governments to design, formulate, and implement policies and discharge functions.

The problem with this definition and operationalisation of governance is that it is not easy in reality to separate the various aspects of governance. Grey areas exist. However, it is difficult to conclude that sovereignty is infringed since everything the IFIs do is defined in economic terms. To the extent, therefore, that the conditions they set do not stipulate a particular regime, they will be deemed as working within their mandate.

Conclusion

We have attempted to answer the question whether the conditionalities of IFIs and donor governments infringe the sovereignty of recipients. The conclusion has been that sovereignty is not infringed. The paper did not seek to examine the moral issues involved, or the fairness of the international system.

The conclusion arrived at was based on what sovereignty meant, both in its classical sense and in a changing international system with a high level of interpenetration. We also examined the distinctions that are drawn between various levels of sovereignty.

To the extent that IFIs do not set conditions that fall outside their mandate, they do not infringe the sovereign rights of recipient countries. To the extent, therefore, that conditions for loans are specifically linked to making sure that loans are put to the use for which they are made, and that loans are used to correct the situation that created the need for them, then sovereignty is not breached.

Additionally, since recipient governments are not coerced into accepting the loans, the conditions that go with the loans cannot be said to be an infringement of sovereignty and hence of self-determination. The leverage that the IFIs have over access to alternative sources of finance, such as commercial bank loans, resulted from the sometimes reckless borrowing of the past. It could be argued that to a certain extent the debt crisis was partly a result of the ease with which loans could be obtained. Even though other factors contributed to the need to borrow, the fact that conditions were not attached made it easy for expansionist policies to be embarked upon even in instances where that was not advisable.

As has been pointed out in relation to aid and political system stipulation, various circumstances can be given when intervention through leverage in another country's affairs can be justified. The misuse of public funds, contracted loans and aid by tyrannical and corrupt governments who treat their citizens with impunity is one such instance. The abuse of human rights, and the fact that governments are not sovereign *per se*, means that if they abuse their power then the population can be helped to remedy the situation in instances where there are no elections. It is difficult to accept the position that a government can by its own volition decide to stay in power for as long as it likes. Thus, if there is no mechanism for political change except by the gun, political conditionalities can be justified.

The infringement of sovereignty usually tends to be associated with actual armed invasion or other forms of intervention that impinge on the ability of a state to carry out its prerogative as an independent member of international society. The setting of conditions which can be freely accepted or rejected by a recipient government does not constitute interference as such.

However, as has been pointed out, there is a grey area in this debate. One is how to distinguish between aspects of politics, as the IFIs have sought to do. The other is where the developed countries should draw the line. The conclusion will have to be that for as long as developing countries continue to depend on borrowing and aid from abroad they will have to accept the conditions that go with these financial transfers.

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