1 Human Rights Accountability as a minimum threshold of MDB Legitimacy

Different disciplines study human rights from varying angles. For instance, lawyers engage in debates regarding the legal status and interpretation of human rights, scholars of cultural studies may debate what human rights mean within different cultural contexts and sociologists are concerned with the social conditions for their realization. In the following, I adopt the perspective of a political theorist and seek to ground the demand for human rights from a *normative* point of view. Yet, I do not aim to discuss human rights detached from our empirical surrounding. Instead, I situate the normativity of MDB human rights accountability obligations, within our empirical world.

This chapter begins by introducing and defining MDBs as a special type of an international organization (Section 1.1). Then, I sketch the transfer of responsibility (and power) from states to international organizations, focusing especially on the augmenting competencies of MDBs. An important takeaway of that section is the insight that MDB activities have autonomous and direct effects on the circumstances and fate of people (Section 1.2). As a result, MDBs need to justify their actions toward the people whose life they affect. As a rule of the thumb, the threshold for MDB legitimacy raises the more governance they exercise. Throughout this work, I understand legitimacy as the "right to rule" (Buchanan & Keohane 2006; Estlund 2007). Two perspectives on legitimacy are commonly differentiated – an empirical and a normative one. While the former – empirical legitimacy - captures the empirical belief among governance addressees that a governor possesses the right to rule (Weber's famous "Legitimitätsglaube," Weber, 1978), the latter is concerned with the actual moral properties of a political order (Beetham 1991; Simmons 1999). It is well-established among political scientists that empirical legitimacy is of paramount importance to secure stable and effective governance (Levi, Sacks & Tyler, 2009). In my work, however, I am concerned with the *normative* legitimacy of MDBs, as only normative legitimacy is capable of grounding movement activism in morality[1]. I thus build on the following core assumption: Like

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1   In contrast to normative legitimacy grounded in impartial moral reasoning, empirical legitimacy may be problematic from a moral point of view. To illustrate this point, consider a fascist regime that is fiercely backed by the population under its command (Schmelzle, 2015).

all international organizations, MDBs are not valuable in themselves. Instead, they derive their 'raison d'être' from their instrumental value in serving human interests. This, in turn, is only possible if they adhere to human rights accountability. To substantiate this claim, I first elaborate on my conception of accountability as a set of standards, transparency and sanctions in section 1.3. Then, I argue for human rights as the relevant *standard* of accountability in Section 1.4, grounding this claim in moral (section 1.4.1) and legal (section 1.4.2) arguments. Yet, I do not stop here, but also situate the normative requirement in the context of larger empirical trends in global governance, adopting the perspective of non-ideal (vs. ideal) political theorist. Specifically, I discuss three proposals for a global order that place human rights protection at their center: (a) an intergovernmental model of well-ordered states, (b) a model of cosmopolitan democracy, and (c) constitutional pluralism (Section 1.4.3). Given the current empirical developments, I argue that only the third model is a realistic option, which implies that MDBs need to assure human rights accountability themselves[2].

1.1   Multilateral Development Banks – A Definition

The term *multilateral development bank* (MDB) consists of three components, each of which requires specification. First, they are *multilateral* organizations comprised of the 'many sides'. In contrast to *bilateralism* involving only two parties, multilateralism is "an institutional form which coordinates relations among *three or more states* (emphasis added) on the basis of 'generalized' principles of conduct" (Ruggie, 1992, 598). For decades, the World Bank was the only MDB of global membership and reach. Recently, the landscape of MDBs underwent some change. In particular, the New Development Bank (or "BRICS Bank") led by Brazil, Russia, India, China, and South Africa was founded in 2014. Only two years later, in 2015, the Chinese-led Asian Infrastructure Investment Bank (AIIB) came into being. Both aspire to present alternatives to the World Bank (Lewis and Trevisani, 2014; Reuters, 2014). Most MDBs are, however, regional in character: the African Development Bank (AfDB), the Asian Development Bank (ADB), the European Bank for Reconstruction and Development (EBRD), the European Investment Bank (EIB), the Inter-American Development Bank (IADB), and the Islamic Development Bank (IsDB). Moreover, there are several subregional development banks, such as the Caribbean Development Bank (CBS) and the Andean Development Corporation (ADC). The International Monetary Fund (IMF), whose mandate is to ensure international financial stability (and not development), is not an MDB (for a more detailed account on the IMF, see Breen, 2013). Then, MDBs are multilateral organizations whose aim, in virtue of their mandates, is *development*. While MDBs belong to the group of international financial institutions (IFIs), they

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2   An important additional question is whether IOs should also have obligations to actively promote human rights to be legitimate. Given the particular functions of some IOs (e.g., assigning internet addresses) and given my interest in a general standard of legitimacy for IOs, I do not follow this line of thought. This however does not preclude that obligations to actively promote human rights should be conferred on some IOs.

are thus of a distinct kind and differ from other IFIs whose aim is macroeconomic stability (e.g., the International Monetary Fund [IMF]). For instance, Article 1.1 of the World Bank's Articles of Agreement states that the purposes of the Bank are "to assist in the reconstruction and development of territories of members" (World Bank, 1989). Similarly, the mandate of the ADB states in Article 1 entitled "Purpose", that "the purpose of the Bank shall be to foster economic growth and co-operation in the region of Asia and the Far East [...] and to contribute to the acceleration of the process of economic development of the developing member countries" (ADB, 1966). Third, MDBs differ from other multilateral development organizations (e.g. the UN Economic and Social Council (ECOSOC)) in that they are *banks*. In concrete terms, this means that MDBs provide financial assistance to developing countries, by funding projects and providing loans tied to reforms by the receiving government. Typical infrastructure projects involve the construction of roads, ports, or power plants; but also social projects, e.g., aimed at improved health services. Policy-based loans can also provide budgetary support conditional to the implementation of financial or economic policies. Another powerful tool at the disposal of MDBs is to provide concessional assistance (including grants and loans) to low-income countries at below-market interest rates. Multilateral development banks make money autonomously through buying and selling on international capital markets as well as through interest and loan repayments. This provides them with a certain degree of financial autonomy. Yet financially, MDBs ultimately depend on capital subscriptions (shares) from their member states (Park, 2017).

Looking at the broader organizational family, MBDs are a sub-type of the class of *international organizations (IOs)*. According to Archer's canonical definition, an international organization is "a formal, continuous structure established by agreement between members (governmental and/or non-governmental) from two or more sovereign states with the aim of pursuing the common interest of the membership" (Archer, 1988, pp. 34-35). As noted above, MDBs involve at least *three* states, their members are exclusively *governmental*, and their common interest is per definition *development*. In parallel to other IOs, MDBs consist of different parts that can be analytically separated. The most important analytical differentiation is that between the IO's executive body on the one hand and its bureaucracy (Barnett & Finnemore, 2004), administration Liese & Weinlich, 2006) or secretariat (Biermann, 2017) on the other[3] (for a good overview of this debate, see also: Bauer, da Conceição-Heldt & Ege, 2015). While country representatives with executive functions on IO governing bodies are controlled by their respective country governments, IO secretariats are made up of bureaucrats that are loyal to their superiors, but (largely) independent of country affiliations (Liese & Weinlich, 2006). As a consequence, IO and hence MDB secretariats possess autonomy which they can use to exercise influence, but also "pathologies" (Barnett & Finnemore, 2004). According to Barnett and Finnemore, international bureaucracies

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3   In the following, I use these terms interchangeably as they all capture the same basic idea of an entity inside the IO that is partly autonomous from the IO's governing body.

"are often the actors empowered to decide if there is a problem at all, what kind of problem it is, and whose responsibility it is to solve it [and they] thus help determine the kind of world that is to be governed and set the agenda for global governance" (Barnett & Finnemore 2004, p. 7).

The degree of autonomy of a MDB secretariat is in turn contingent on the issue at stake and the degree of member state involvement. Where member states have a salient interest, the main task of secretariats is to assist the governing body technically, logistically, and administratively. Thus, while it would be mistaken to understand MDBs (or IOs at large) as only passive or neutral arenas of states, the influence of member states remains considerable given that they possess financial leverage and care enough (Park, 2017). Hence, while member states remain influential, IOs increasingly exercise power autonomously, too. Importantly both, governing body and MDB secretariats are an integral part of the MDB as a whole. Whether it makes sense to look at them separately, or on the level of the MDB as a collective actor, in turn depends on the research interest at hand.

To sum up, MDBs are organizations that coordinate relations and activities among three or more states on the basis of generalized principles of conduct with the aim to enhance development. MDBs may have either global or regional membership/reach. In contrast to other multilateral development organizations, MDBs provide loans and financial assistance to developing countries. Finally, MDBs consist of different parts, involving the MDB governing body as well as a partially autonomous secretariat with actor hood in its own right. With this definition in mind, I now describe the trend toward increasing responsibilities among IOs generally and of MDBs in particular.

1.2   The Growing Responsibilities of Multilateral Development Banks

Globalization describes the increasing political, social, economic and cultural interconnectedness of contemporary societies, due to the transnational movement of money, people, technology, information, goods, and services (James, 2005). As a result, people interact globally on an unprecedented scale. At the same time, global interdependencies increase. Today, it is a commonplace that trousers and telephones involve labor in several countries around the globe before they are sold in a specific location. Also, we become increasingly aware of global common pool resources—in short, "global commons" (UNEP, 2017). The earth's natural resources including oceans or the atmosphere are well-known examples. Unlike global public goods whose consumption does not reduce the quantity available to other actors (e.g., knowledge), global common pool resources are limited (Ostrom, 1990). The degree of interconnectedness is perhaps most evident with regard to climate change. In addition, though, several policy challenges today—from organized crime, over financial stability to trade and development—have a significant global dimension. Where the scale of interactions and interdependencies increase, people become very aware of the dangers connected with uncoordinated, individually motivated behavior that risks producing a global "tragedy of the commons" (Ostrom, 1990). For instance, locally bound processes such as coal mining in Germany or deforestation in

Indonesia and Brazil have a direct impact on the global climate. To avoid such detrimental effects for our collective well-being worldwide and to respond to global challenges, there is widespread consensus among scholars and academics that we need institutionalized forms of global governance (Rosenau, 1992). In particular, academics, politicians and the general public assign IOs a critical role in solving global governance challenges, primarily due to their expertise (Liese et al., IPA Projekt) and because of their ability to enable cooperation among states (Keohane, 1984). Already a decade ago, a majority of the German population believed that the G8 / G20, but also IOs such as the United Nations (UN), the International Monetary Fund (IMF) or the World Bank possessed greater influence in world politics than the German government (Mau, 2007). Despite current trends to openly challenge the very idea of multilateral cooperation through international organizations even among established Western democracies (U.S. withdrawal of support for the UN, the World Trade Organization (WTO), or NATO), empirical trends indicate that IOs have steadily gained in importance—throughout the last decades and especially since the end of the Cold War (Heupel & Zürn, 2018). To recall, I conceptualize IOs generally, and MDBs in particular as *partially autonomous actors* (see Chapter 1.1). To sketch the level playing field, I briefly address the increase of IO power (with a special focus on MDB bureaucracies) along stages of the policy cycle, including: (a) knowledge-creation and agenda setting, (b) decision-making, (c) monitoring and rule interpretation, (d) rule enforcement, and (e) evaluation (Avant et al., 2010).[4]

First, international organizations play an increasingly important role in *creating knowledge* (e.g., shaping core concepts of the respective policy field) and *agenda setting*. Several IOs, including the Organization for Economic Cooperation and Development (OECD), the World Bank and the International Monetary Fund (IMF), have developed research capacities that surpass those of most states in the world. As a result of these growing research capacities, IOs develop transnational guidelines that provide guidance to a variety of public and private governance actors. *Secondly*, IOs are increasingly tasked with *decision-making* themselves, rather than only facilitating compromise among states. In a recent, comprehensive study, Hooghe and Marks collected data on 74 IOs over the period from 1950–2010, looking at the delegation of tasks from states to IO bodies. Specifically, they looked at the responsibilities of IO bodies to access or suspend members, to reform their own mandate, allocate budgets and to engage in autonomous policy making. Their standardized delegation index shows a steady increase in responsibilities of IO bodies, especially among larger and more complex organizations where increasing IO autonomy promises to reduce the transaction costs of cooperation (Hooghe & Marks, 2015). Moreover, majoritarian decision-making has replaced a strict consensus requirement and in consequence vastly increased the ability of international institutions to act. Today, roughly two thirds of all IOs with membership of at least one major power have the opportunity to take majority decisions and thus the ability to cancel vetoes (Blake & Payton, 2008). *Third*, IOs increasingly perform *monitoring* tasks and *rule interpretation*. As the number of international treaties

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4   The stages are drawn from the public administration literature which has been adopted to the study of international institutions (Zürn et al., 2012).

is growing, there is a concomitant need for actors who process and publicize information on treaty compliance. Treaty regimes empower international organizations to conduct such oversight (e.g., the IMF for the financial system; Siebenhüner & Biermann, 2009). Relatedly, the task of rule-interpretation has increasingly shifted to quasi-judicial bodies. While there were only 27 such bodies in 1960, there were 97 in 2004 (Alter, 2012). *Rule enforcement* remains rare in international politics, but is increasing, too. A first example is the United Nations Security Council (UNSC), which exercises considerable power over the UN's member states and explicitly claims a right to rule. Both its actions and its claim to authority, however, are limited in scope to the prevention of war and, more recently, the protection of human rights (Hurd, 2008, p. 185). International transitional administrations may temporarily claim the right to assume the role of a state government (Jacob 2014) while the International Criminal Court constitutes an instance of centralized political authority with a right to issue commands that are binding for all states that have submitted themselves to the court by signing the Rome statute (Bogdandy & Venzke, 2012, p. 18). The few number of institutions tasked with rule enforcement contrasts with the extensive amount of international organizations that *evaluate* policies and institutions through rating and rankings. For instance, rating agencies such as the International Accounting Standards Board (Büthe & Mattli, 2011), the International Panel for Climate Change or the PISA studies of the OECD have gained in relevance (Zürn, 2018). In sum, the scope and depth of international organization's governance is on the rise among all dimensions of the policy cycle.

Among all international organizations, MDBs are of a special kind. In short, MDBs are member state organizations that seek to enhance development by engaging in knowledge-creation and agenda setting, decision-making, monitoring and evaluation. Specifically, their core activity consists in providing loans and financial assistance.[5] While MDBs lack coercive military capacities, some authors argue that their ability to attach conditionality to the disbursement of loans amounts to rule enforcement (Rich, 2013; Zürn et al., 2012). Among all MDBs, the World Bank stands out in terms of relevance and power resources (for an elaborate discussion of the World Bank; see Chapter 4). Consider the first dimension, knowledge creation and agenda setting: here, the World Bank regularly publishes reports and guidelines that are crucial for the development community at large. Examples include the World Development Report (WDR) 2011, or the "Guidelines for Public Debt Management" issued jointly by the World Bank and the IMF. In their "Flagship Reports" and guidelines, the World Bank has managed to introduce and shape concepts that are central for the development discourse (Möllers, 2008). Beyond that, the World Bank is regularly involved in shaping and formulating the agenda of international summits such as the G7/G8 and G20. For instance, the "G20 Hamburg Action Plan" (G20, 2017) was prepared and authored by the World Bank to a large extent (DIE ZEIT, 2017). Becoming the leading producer of development knowledge after the turn of the millennium, the World Bank spends some $600 million per year on 'analytical and advisory activities' in 2006 alone, while its research department (which accounts for less than 5% of this figure) has a staff of over

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5   For a more elaborate discussion of MDBs and their definition, see Chapter 3.1

120 people (Kapur, 2006). The role of MDBs as engineers of novel concepts and knowledge promoters is likely to increase in the future with the spread of the script called "knowledge bank" – a vision formulated by World Bank president James Wolfensohn already in 1996 (Kramarz & Momami, 2013). In essence, the term stands for strategies to generate, manage and spread knowledge more effectively, and to enhance the learning capacities of the MDB itself (Kapur, 2006; Wagstaff, 2012). In its Annual Report of 2009, the World Bank stated that "Knowledge is the key to development effectiveness, and the driver of a successful development institution. Without knowledge, the World Bank Group cannot lend, it cannot advice, and it cannot convene. Knowledge is the core of our DNA" (World Bank, 2009). Similarly, regional development banks adopted strategies to manage and sell knowledge more effectively. For instance, the African Development Bank states that it wants to become the "premiere knowledge Bank for Africa" (AfDB, 2008, p.iii). With regard to *decision-making*, MDBs have been able to take majority decisions for long. As a result, MDB decisions may go against the explicit will of member states, which are nevertheless bound by the decision.[6] Perhaps more importantly, MDB secretariats are relatively autonomous to develop their own criteria for the disbursement of loans. A prominent example is World Bank conditionality attached to its loan disbursement (Zürn et al., 2012). With respect to *monitoring* and *evaluation*, the World Bank regularly publishes the influential "Worldwide Governance Indicators" (WGI), which are published yearly since 2002 (Kaufmann et al., 2011). Development organizations (e.g., the U.S.-based "Millennium Challenge Corporation") reference these WGI as a main source to allocate their resources (Müller, 2008). Next to Credit Rating Agencies (CRA), the OECD, Freedom House and Transparency International, MDBs are prime examples of a phenomenon called "global governance by indicators" (Davis et al., 2012; Merry et al., 2015).

In sum, international organizations generally, and MDBs in particular, exercise an increasing degree of power in today's global governance. This exercise of power shapes the fate and circumstances of states, but also of individuals directly. For instance, where the state is either not capable or not willing to provide basic services, MDBs that step in to fill the gap (e.g., providing loans to finance electricity, basic infrastructure or housing) directly affect individuals. Who is and who is not selected as project beneficiary for instance directly shapes the chances for a better life of people. Conversely, the replacement of whole communities in the context of MDB financed infrastructure project negatively influences hundreds, if not thousands of people every year (International Consortium of Investigative Journalists [ICIJ], 2016). While states retain some control over infrastructure projects (albeit at times only formal), majoritarian decision making inside MDBs, international monitoring and evaluation, as well as the publication of ratings and rankings transcend the control of governments. However, all of these activities do not only have major impacts for financing decisions of public and private actors, they also affect the life of individuals directly. This begs the question, which standards of MDB governance should suffice to be evaluated as legitimate, meaning justifiable and desirable (see Heupel & Zürn, 2017)? I argue that human rights accountability is a normative minimum standard of MDB governance. In order to make that point, I first

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6   However, MDBs seek to take decisions in consensus at the Boards of Directors in practice.

conceptualize accountability as a) standards, b) transparency and c) sanctions in cases of non-compliance (section 1.3), before I argue in favor of human rights as the crucial standard of MDB accountability (section 1.4).

1.3   Conceptions of Accountability

The English term "accountability" can be traced back to the Middle Ages. Interestingly, while the related term "accounting" from the realm of finance can be easily translated, the term "accountability" has no direct equivalent in other European languages (Dubnick, 2007). While existing translations then tend to emphasize aspects of the term, such as answerability (i.e., the German "Rechenschaftspflicht") or responsibility (the Spanish "responsabilidad," or "responsabilité" in French), several non-English authors use the term in its English version. Accountability as a concept has deep roots in different literatures which produced a wide set of definitions. A first important distinction is that between "managerial" and "public" accountability (Steffek, 2010). The management literature is rife with notions of accountability and therein emphasizes the responsibility of managers toward their shareholders (Soltani & Maupetit, 2015). The focus is hence on outputs, most crucially management performance. According to this reading, managers agreed to maximize the firm's profit and shareholders have a legal right to hold them answerable to the firm's output. On the other hand, the notion of public accountability implies that governance-actors exercise power over those governed on a wide range of issues. Unlike shareholders, citizens subject to the power of public institutions (i.e., the public administration of a state, or international organizations) cannot opt out. Given my research focus, I will concentrate on conceptions of public accountability. Scholars of public administration (Mulgan, 2003; Romzek & Dubnick, 1998), where the concept enjoys particular attention, adopt rather formal definitions, emphasizing public bodies such as governments as addressees of accountability. According to Roberts and Scapen's (1985) influential work, "accountability" describes a social relationship that is characterized by "the giving and demanding of reasons for conduct" (p. 447). Political scientists (Mansbridge, 2014; Stokes, 2005) often approach accountability from the perspective of power, mostly in the context of government accountability toward their voters. Other publications investigated the specific problems of accountability for global regulatory institutions generally (Held & Koenig-Archiburgi, 2005; Keohane & Nye, 2003), as well as in relation to particular international institutions (O'Brien et al., 2000; Woods & Narlikar, 2001).

In all these works, accountability is a relational concept, linking those who perform tasks and those for whom they perform, or alternatively, those affected. As demands for justification come after the act, accountability is an *ex post* activity. Lastly, accountability is a consequential task, as it may bear sanctions for accountability holders (Bovens et al., 2014). Capturing the broad consensus on the essence of accountability in a general definition, Scholte noted that "if A takes an action that impacts upon B, then by the principle of accountability A must answer to B for that action and its consequences" (Scholte, 2011, p. 16). In line with Scholte's definition, Keohane's provides a more specific definition that suits my research interest particularly well. According to Keohane's

definition, accountability involves three elements: "standards that those who are held accountable are expected to meet (1); information available to accountability-holders, who can then apply the standards in question to the performance of those who are held to account (2); and the ability of these accountability holders to impose sanctions: to attach costs to the failure to meet these standards (3)" (Keohane, 2011, p. 102). I will discuss the first component of this definition in more detail below. To meet the second requirement, substantial *transparency* concerning the application of standards on behalf of the institution in question is paramount, for without transparency a violation of standards remains covert. To ensure transparency, those affected by MDB interventions need accurate information about the work and internal functioning of the organization. In addition, transparency involves responding to requests that are directed to it by accountability holders and to share information in a timely and understandable manner. The existence of sanctions has important instrumental value, as sanctions provide strong incentives for compliance with the standards of accountability. Without the ability to punish and correct MDB misbehavior, an accountability regime could not effectively guarantee adherence to standards. To capture the essence of the three dimensions of accountability, I will refer to them in the following as "standards," "transparency" and "costs for noncompliance." Together, these three elements make it possible that the ruled have power over the rulers. In the following, I specify the accountability relationship I am interested in this work – namely that between MDBs and those *directly* affected by their projects. This clarification is necessary before I argue that human rights are the *standards* MDBs should care about.

Accountability toward whom?

A crucial question when talking about the accountability of MDBs is, "Accountability toward *whom* exactly?" For most actors are accountable to someone, be it a professor, drug lord or God. In the context of international institutions, "accountability" commonly means that the agent (the MDB) is responsible in front of the principal (the member states). According to this interpretation of accountability, citizens who are affected by MDB governance have no direct standing. Instead, they may hold their national governments accountable, which in turn hold the MDB accountable. Scholte (2011) questioned that this interpretation of MDB accountability toward states only is satisfying. Scholte brings forward three main points which strongly suggest that it is not – the diffusion of responsibilities of the global level, the relative lack of influence of most states within MDBs and the poor democratic record of a significant number of states. According to Scholte, accountability was not a major concern in respect to global governance institutions 50 years ago – a time when international organizations were "few in number, small in size and limited in scope" (p. 18). At that time, national governments were the only reasonable accountability holders for public policy on the national and the international level. In contrast, global governance today is a process involving multiple actors and layers of decision-making, with international organizations exercising an increasing influence on their own (Barnett & Finnemore, 2004). Global public policy most often emanates from complex networks without a regulatory body at its center. From an accountability point of view, the problem of such polycen-

tric governance lies in a potential diffusion of responsibilities. To avoid that actors in these networks exploit the post-sovereign circumstances of global governance, Scholte argued for multifaceted accountability, applicable to all nodes of the network involved in a dispersed and gradual fashion. In particular, while we should not exaggerate the power of MDBs, we should also be aware of the fact that their independent influence and its corresponding responsibilities cannot plausibly be borne by states alone either. Scholte concluded that some responsibility "lie with the global governance mechanism itself" (Scholte, 2011, p. 20). Second, even where chains of command are clear and fall under the oversight responsibilities of member states, few states actually have a say in IO decision-making due to their relative lack of influence. As Viola and colleagues (2015) showed, inequalities between member states inside IOs tend to increase over time. Multilateral development banks tend to reproduce inequalities to a particular extent, since votes are allocated on the basis of economic shares. For instance, the United States used to command veto power in the World Bank in virtue of its shares, while China commands veto power in the Asia Infrastructure and Investment Bank (AIIB). In contrast, Bangladesh – a country with 160 million inhabitants – commands less than 1% of shares in both institutions[7]. Third, if states are not democratic in the first place, it is hard to see how they could render international institutions accountable toward those citizens affected by MDB projects. The assumption of a two-level legitimation of IOs more generally builds on the premise that citizens are represented in IOs in virtue of their governments. Autocrats do not, by definition, represent their citizens and thus simply lack any accountability they could transfer to the IO in question. To these three critiques, I add a fourth argument against the idea that state accountability implies IO accountability. Today (and in the past), the vast majority of states in the world are not consolidated, but include large areas of limited statehood where the state does not possess the monopoly on the use of violence and/or is limited in its capacity to design and implement rules (Krasner & Risse, 2014). Where the government only controls the capital, a diversity of nonstate governance actors (e.g., local chiefs, religious leaders, warlords, but also IOs) typically fill the vacuum to exercise de facto rule (Risse & Lehmkuhl, 2007). Where the governance actor stepping in exercises control in an autocratic way, the population living in areas of limited statehood is not democratically represented either, even if the central government may be democratically elected. Nevertheless, IOs may conduct projects in such areas which have an impact on those living in areas of limited statehood. To avoid major accountability gaps, IOs need to respond to governance addressees living in areas of limited statehood directly.

In sum, the multifaceted nature of global governance with MDBs exercising considerable influence on their own, inequalities among member states in MDBs, the fact that the world is populated by several nondemocratic states and the presence of areas of limited statehood make a model of MDB accountability that rests on state accountability only implausible. I thus agree with Buchanan and Keohane (2006) in that "accountability per se is not sufficient; it must be the right sort of accountability" (p. 19). I argue in the following section that IOs need to remain accountable to their member states.

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7   Cp. AIIB, 2016: https://www.aiib.org/en/about-aiib/governance/members-of-bank/

In addition, however, MDBs need to respond to the four shortcomings accountability toward states only faces. As I argue, we need to supplement accountability toward states by MDB accountability toward those directly affected by its governance – *direct* accountability. This accountability should be immediate, effective and unmediated by governments.

Direct Accountability – the accountability toward those directly affected

According to the general definition offered above, accountability establishes a relationship between a governance actor "A," and those whom it affects "B." The critical question therefore is: who counts as "affected" by IO governance? Who is the relevant public? The nature of this public may vary according to the organization in question. For instance, the Catholic Church addresses all Catholics. To complicate matters further, IOs may address different constituencies according to the task they engage in. The European Union (EU) addresses European states (e.g., EU Commission Directives), but also regions or citizens throughout the world (e.g., ECHO's humanitarian work), depending on the issue and governance mode at hand. Identifying the relevant public can thus be a daunting task. Moreover, determining who has a right to claim accountability is a highly political task. Inside states, accountability regimes may reinforce established social hierarchies based on ethnic origin, class, gender and/or race. Similarly, accountability arrangements of IOs may entitle states with large shares and/or transnational corporations (TNCs) and thus serve constituents who are already powerful. As Scholte put it, "there is nothing inherently democratizing in accountability" (Scholte, 2011, p. 22). However, accountability does have the potential to empower marginalized groups affected by IO governance, if defined and operationalized accordingly.

In my work, I am concerned with the accountability of MDBs toward those directly affected by their projects – whether these are large infrastructure projects or services. I thus understand the "all affected principle" as one according to which all communities and individuals affected by MDB activities have moral standing as subjects of justice in relation to it[8]. This interpretation of the "all affected principle" is well established among political theorists concerned with legitimate forms of global governance. According to Fraser,

> "What turns a collection of people into fellow subjects of justice is not geographical proximity, but their co-imbrication in a common structural or institutional framework, which sets the ground rules that govern their social interaction, thereby shaping their respective life possibilities, in patterns of advantage and disadvantage." (Fraser, 2007, p. 25)

To distinguish this form of accountability that MDBs bear toward those individuals and communities they directly affect through their work from alternative forms of account-

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[8]   Aspirational conceptions go one step further and include a time dimension, enabling to include *past* or *future* generations among those who may voice a justified claim. Current demands for reparations for harms caused during colonialism are prominent instances of accountability claims relying on a notion of the former, whereas conceptions of "sustainable development" rely on the latter. In this contribution, I focus myself to the accountability of MDBs toward current generations.

ability, I refer to it as "direct accountability." Recalling the challenges from above (diffusion of responsibilities, power asymmetries among member states, nondemocratic member states and MDB engagement in areas of limited statehood), direct accountability is equipped to mitigate all four of them. Direct MDB accountability ensures that those affected by MDB governance have an opportunity to claim their rights. This is the case even where MDBs cooperate with multiple other actors with whom they share responsibilities. Second, direct accountability circumvents inequalities at the level of member states, since all those affected by MDB governance have a direct and equal right to file a claim. Similarly, a direct channel between MDBs and governance addressees cuts out national governments who are either not willing (e.g., nondemocratic member states) to guarantee certain basic rights to their citizens, or not capable (e.g., in areas of limited statehood). In sum, then, direct accountability is an effective way to establish a normative relationship between MDBs and their governance addressees that also fits the factual influence MDBs exercise over people's fate. As a final piece of the accountability puzzle, I now specify which *standards* direct accountability should rest upon.

1.4   Human Rights as the relevant Standard of Accountability

In principle, relations of accountability may be built on any given standards. By way of example, managers of a private business are accountable toward its shareholders. The standard here typically is the maximization of profit. If managers fail to maximize profit, they have good reasons to fear for their job. In contrast to the realm of private business, there is no equivalent standard of success such as "profit" for public institutions. While managerial accountability is often technical, public accountability is more complex, involving the process of decision-making as well as multiple goals (Steffek, 2010). Depending on the context and the public institution in question, accountability standards may take different forms and may be more or less demanding. For example, in the context of a democratic state, public accountability is closely tied with elections, as elections provide a means to sanction politicians and hence to force them to explain their conduct to the electorate. In the following, I draw on normative and legal reasons to argue that human rights are the kind of standards that should govern any political order, nationally or internationally (Rawls, 1993). Implicit in this argument is the suggestion that human rights are the minimum standards of accountability that should guide the actions of MDBs generally and the World Bank in particular.

1.4.1   Human Rights as the Protection of Basic Human Interests

There is broad agreement among eminent political philosophers (Buchanan, 2007; Cohen, 2004; Forst, 2007; Griffin, 2008; Ignatieff, 2001; Rawls, 1999; Raz, 2010) that human rights express "standards of basic political legitimacy" (Forst, 2010, p. 711) and thus the moral minimum standard for a given political order.[9] In part, their normative force

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9   In my understanding, MDBs are part of the political order on the international level.

relates to their historical genesis. While their precise roots are difficult to determine with certainty, they appeared prominently in 17th century England, when the "Levellers" claimed that a government could only be justified if authorized to rule by those affected, for otherwise, "naturally free persons" would be subjected to "cruel, pitiful, lamentable and intolerable bondage" (Lilburne 1645 in Haller, 1957, p. 303). The language of a "natural right" and "naturally free persons" was explicitly directed against the feudal organization of society whereby the absolutist monarchy claimed a "divine" right to rule. According to Forst (2010), already here the essential message of human rights became evident, namely, that every person was recognized as a social and political subject that was born naturally free. "Free" here primarily meant: free from arbitrary social or political domination. In Forst's reconstruction of the historical genesis of human rights (2003; 2010), the original meaning of such rights followed an early republican (rather than a classical liberal) impulse. On a macro level, the message was that "there can be no legitimate social or political order that cannot be adequately justified to its subjects" (Forst, 2010, p. 717). The French "Declaration des droits de l'homme et du citoyen" (engl. "Declaration of the Rights of Man and of the Citizen") from 1789 is perhaps the most cited founding document of human rights, declaring the "natural liberty and equality of all humans" (Article 1), guaranteeing the rights to "liberty, property, safety and resistance against oppression" (Article 2) and that any sovereignty resides essentially in the people[10] (Article 3). Article 6 then expresses the notion that "all citizens have the right to take part, personally or through their representatives" in the making of the "general will," that is, the laws that govern human interaction (Declaration des Droits de l'homme, 1789). The basic idea that people should be treated as equal and free citizens with political autonomy and free from unjust and arbitrary rule is also prominent in the Universal Declaration of Human Rights two centuries later—even though it came about in a very different context (notably, the experiences of totalitarian tyranny in Nazi Germany during WWII). In sum, a reconstruction of the genesis of human rights suggests that human rights should be understood as *guarantees* and, simultaneously, *expressions* of each person's equal moral status. To have "moral status" means to be part of an entity governed by norms of mutual justifiability. Norms are mutually justified if they are generally acceptable, meaning independent of particular subject positions. In other words, anyone should have good reasons to integrate the norm into one's moral consciousness (Ladwig, 2011). Due to this special normative character of human rights, there is widespread consensus that human rights should be at the core of each political order that aims to exercise power over its subjects, independent of whether this order consists of states, international organizations or institutions of a yet different nature (Forst, 2011). Institutions have no value in themselves. Instead, they possess an instrumental value relative to the aims they seek to realize.

Conceptions of human rights

In the previous section, I referred to the widespread agreement on human rights as a substantive basis for legitimate governance. In agreement with Ladwig and Gosepath,

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10   In the original text referred to as "the nation."

I further hold that universality, equality, moral grounding, and general epistemic accessibility are necessary *formal* requirements of human rights (Gosepath, 1998; Ladwig, 2011). Foremost, the Universal Declaration of Human Rights establishes the *universality* of human rights. This means that all living members of the human species possess these rights. Closely connected to its universal validity is the condition of *equality*. There is a difference between the notion that all humans enjoy a right to life, and the idea that all humans enjoy an equal right to life. Human rights are thus of a kind that focusses our attention to those features that all people share in virtue of being a human being. To view humans on such a level of abstraction obliges us to ignore potential differences in terms of gender, belief, color or origin (Ladwig, 2011). Thus, human rights entail the notion that all human beings have the same moral status, that is, they should enjoy the same human rights. In addition, human rights are *morally grounded* claims toward a given political order. They are thus normatively valid and relevant even though they might not be enshrined in the constitution of a state or an international organization. The de facto reluctance to translate human rights into positive laws by certain political executives does not prevent them from critique. Quite to the contrary, such a discrepancy constitutes a strong reason for us to voice protest and accusations. In addition, human rights are morally grounded in the sense that they impose moral duties upon others to respect and protect these rights. In this sense, human rights help to clarify what we all owe to each other (Jacob, 2014). Since human rights are binding upon all political orders, all people worldwide need to be able to see and apprehend their moral relevance. Human rights thus need to fulfill the condition of *general epistemic accessibility*: all reasoning people with good will and sufficient information need to reach the conclusion that we possess human rights. Note that this is different from a criterion that all people value human rights empirically. The question is not, whether people respond they value human rights if asked, but whether they have good moral reasons to do so (Jacob, 2014). Such epistemic accessibility is not viable on all levels of precision. Concrete laws are adaptions of human rights norms that necessarily reflect the historic experience and legal traditions of political communities. Still, the requirement of epistemic accessibility is relevant at the level of basic human rights norms and principles (Ladwig, 2011).

In sum, there is widespread agreement regarding the fact that a) human rights are the normative core and standard of legitimacy of a given political order (independent of the level of that order), and b) regarding the formal requirements of human rights, i.e., their character as universal, equal, morally grounded and accessible rights. Despite all this agreement, disagreement exists regarding the right conception of human rights in terms of their ultimate moral foundation. Diving into the details of related debates in political theory would go beyond the scope of this work, so I limit myself to contrast prominent understandings: a functionalist perspective (Beitz, 2004; Rawls, 1999), one placing reciprocal moral obligations among autonomous subjects in the center (Forst, 2007; Tugendhat, 1997; Forst, 2007) and a conception focusing on human dignity (Habermas, 2010; UN GA, 1946). My critique of these three accounts leads me to the most plausible conception of human rights as a means to protect basic human interests (Cohen, 2004; Griffin, 2008; Ignatieff, 2001; Ladwig, 2011). To recall, I discuss conceptions of human rights and delineate the conception to which I adhere to clarify

and ground my claim that human rights accountability is necessary for legitimate MDB governance.

In his famous book "The Law of the Peoples," Rawls (1999) conveyed a *functionalist understanding of human rights*. In his book, Rawls' aim is to develop a normative theory of international politics that takes empirical realities on the ground, particularly the "reasonable pluralism" of peoples in the international arena, seriously. Rawls draws a close link between international peace and security on the one hand, and internal standards for the "decency of domestic political and social institutions" (p. 80) on the other. Given normative pluralism, human rights only have instrumental value in providing "a suitable definition of, and limits on, a government's international sovereignty" and to "restrict the justifying reasons for war and its conduct (Rawls, 1999, p. 79). Following Rawls, Beitz (2004) favored a "practical" understanding of human rights over an "orthodox" one (p. 196) and defined the function of human rights to provide "justifying grounds of interference by the international community in the internal affairs of states" (Beitz, 2004, pp. 202-203). Rebutting such a conception, I concur with Griffin's (2008) and Forst's (2010) critique that justifying human rights in terms of their function to provide reasons for legitimate interventions means "to put the cart before the horse" (p. 726). Instead, we first need to ground human rights normatively before we ask which legal structures are required to protect such rights internationally. The first question of human rights, then, is not "how to limit sovereignty from the outside; it is about the essential conditions of the possibility of establishing legitimate political authority" (p. 726) from the inside.

A second approach searches for a moral grounding of human rights in the *reciprocal moral obligations among autonomous subjects*. Authors in this camp depart from a contractual understanding of moral rights and duties, arguing that reciprocity is foundational for any moral norms, including human rights. In his work, Forst (2007, 2010) famously argues that all such rights have a common source in one basic moral right: the right to justification. According to Forst, his discursive approach is reflexive, as it embodies the idea that any moral justification of human rights must be able to stand scrutiny regarding reciprocity and generality in intersubjective discourse. Thus, the requirement that each right holds intersubjective justification presupposes a right to justification among all those whose rights are at stake. If a person whose right is at stake believes the right in question does not meet the threshold of reciprocity[11] and generality[12], he/she has a qualified veto. The approach is "reflexive," as it reconstructs the very idea of justification in discourse with regard to its practical implications.

Autonomy as a source of normativity also does most of the work among conceptions starting from a notion of *human dignity*. The Universal Declaration of Human Rights (UN GA, 1948) prominently refers to the human dignity of all people, as do several constitutions around the world. For instance, the German Basic Law states in Article 1(1) that "Human dignity shall be inviolable. To respect and protect it shall be the duty of

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11   Reciprocity means that "no one may make a normative claim he or she denies to others and that no one projects one's own perspective, values, interests, or needs onto others" (Forst, 2010, p. 719).

12   Generality is defined by Forst as the requirement that reasons "have to be shareable by all affected persons" (Forst, 2010, p. 720).

all state authority" and continues by connecting dignity to human rights in Article 1(2), stating that "the German people *therefore* acknowledge inviolable and inalienable human rights as the basis of every community, of peace and of justice in the world" (German Basic Law, 1949). While there is agreement among political philosophers that the term "human dignity" is a valuable concept to express the high moral status of every human being (see Macklin, 2003; for a diverging view), there is disagreement concerning the properties that convey dignity onto human beings (but not onto animals or other living creatures). While religious proposals (e.g., humans as creatures in God's own likeness) have taken a back seat over the last two centuries, most philosophers view the human capacity to reason as central (Habermas, 2010). Thus, Forst's discursive approach and those relying on a notion of "human dignity" focus on the value of autonomy as the moral source of human rights.

In agreement with several authors (Goodwin, 2008; Ladwig, 2010; Nussbaum, 2011; Goodwin, 2008; Ladwig, 2010), I hold that conceptions relying on autonomy as a source of normativity fall short of a satisfactory justification of human rights as a whole. The crux with approaches relying on a contractual notion of morality is that they only confer moral status upon people who are able to voice and understand justifications. As a consequence, they exclude small children or human beings with mental disabilities – a consequence that does not seem bearable for a conception of human rights. On a more general level, authors who argue that the capacity to formulate, understand and adhere to norms is a pre-condition to acquire moral status in a community fail to distinguish between *addressees* and *beneficiaries* of moral right. While only reasonable people can agree on and adhere to moral norms, many more (including children and mentally challenged) people might benefit from their existence (Regan, 2004; Ladwig, 2010). But even among human beings capable of reasoning, the capacity for autonomous reasoning and acting (as well as all other capacities) has an empirical base. Hence, it is plausible to assume that capacities are distributed unequally among people (Wolf, 1990; or Kohlberg's early six "stages of moral development", 1973). If capacities are the moral source of human rights, it is difficult to explain why they should be enjoyed *equally* (Ladwig, 2010). Finally, several authors pointed out that cognitive capacity to govern one's own life, the ability to reason and moral reflection are truly critical to justify the existence of *some* human rights. For instance, rights to freedom of expression, freedom to choose one's religion, or the right to vote are hardly comprehensible without reference to the human capacity for autonomy. However, rights protecting a person's physical well-being such as the right to subsistence or the right to physical integrity cannot be fully explained by reference to autonomy. Suffering severe pain is bad in and of itself, irrespective of our capacity for autonomous reasoning (Ladwig, 2007). Due to these limitations, I follow the more plausible conception based on a notion of basic human interests.

Basic Human Interests as a source of Human Rights

Basic interest-based conceptions of human rights require, first of all, a definition of "interests." The way I understand the term, "having an interest in X" means to have a good reason to want X. Note that this differs from "*needing* X" or "*desiring* X." The term "human needs" commonly refers to those goods that are necessary for our purely biological

survival (e.g., sleep, food or water). While we certainly have good reasons to want such goods, we might have good reasons to want something beyond that what is *necessary* for our survival. "Desires", (or wishes) on the other hand, fail to qualify as sources for human rights, as they are mere expressions of individual *preferences* that cannot generate duties for others. In parallel to other interests that are not "basic," desires fail to meet the "necessity requirement." This hints at yet another important distinction: interest-based conceptions distinguish "*basic* human interests" from simply "human interests." While the former are truly necessary for a minimally good life, the latter are not. Because of the inherent notion of a "minimally good life," interest-based conceptions are not void of ethical content. In fact, this ethical content has been a primary source of critique toward such conceptions (Forst, 2010). In light of ethical pluralism around the world, how can we possibly define what constitutes a "minimally good life"? We should take this question very seriously. It is here that the basic interest conception parts from the (otherwise very similar) capabilities approach by Nussbaum (2006), who suggested a list of capabilities necessary to life "a life worthy of human dignity" (p. 70). To be sure, Nussbaum did not argue that she had some privileged access to truth, enabling her to access the precise list of necessary capabilities. Rather, she saw her list[13] as a contribution to the debate, since "it is better to be vaguely right than precisely wrong" (Nussbaum, 1992, p. 215). Yet, Nussbaum also relied on a connection between individual capabilities and a notion of human dignity, without explaining the precise relationship between both (Beitz, 2013). Moreover, Nussbaum seems to contradict herself when she claimed that her list "already represents what it proposes: a type of overlapping consensus" (Nussbaum, 2000, p. 76) – a claim that may well be disputed (Jacob, 2014). I agree with Nussbaum and others (Goodwin, 2008; Ladwig, 2011) in that the fact of ethical pluralism does not imply that we should avoid the search for truly "basic" human interests. After all, the searches for moral foundations of human rights, as well as human rights themselves, are not ethically neutral. Yet, in contrast to Nussbaum, I hold that the foundation of human rights should remain compatible with a wide range of reasonable conceptions of the good and thus focus on those interests which are truly basic. At the same time, human rights are morally grounded in the sense that they should generate duties, which is to specify what we all owe to each other (see 1.5.1). Thus, some interests that pass the threshold of relevance for a minimally good life do not qualify due to their inherent nature. To cite a common example, someone's interest to be loved and desired does not qualify as a source of moral obligation. While being loved is certainly highly relevant to most (if not all) people, love inherently relies on the voluntary act of others and thus cannot generate moral duties. Thus, basic human interests need to be truly basic to allow for a wide range of conceptions of the good and at the same time be able to specify moral duties. In agreement with Jacob (2014), I propose that the interest in physical integrity as well as an interest in autonomy fulfil both these criteria. The basic interest in *physical integrity* flows from the vulnerability

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13   This list includes, among others, goods such as health, free movement and autonomy, as well as the (somewhat more controversial) abilities to have attachments to things and people, the social basis of self-respect, being able to laugh, play and enjoy re-creational activities as well as the ability to hold property (Nussbaum, 2001, pp. 40-50).

of human beings. Since violations of physical integrity impose suffering and pain, this interest is morally significant in itself (and not just instrumental to human agency or autonomy, as some have argued; e.g., Sen, 2004). According to Jacob (2014), the interest in physical integrity involves two dimensions: not to be physically hurt, and access to sufficient means of subsistence (e.g., water, food and medical care). Secondly, *autonomy* qualifies as a basic human interest. According to a broad and widely accepted definition, autonomy means "being one's own person, directed by considerations, desires, conditions, and characteristics that are not simply imposed externally on one, but are part of what can somehow be considered one's authentic self" (Anderson & Christman, 2005, p. 3). Autonomy is necessary for a minimally good life, since the very idea of a conception of the good implies that one is capable to think for himself and to reflect to some degree what one values in life. Consider the opposite of autonomy: "being guided by forces external to the self and which one cannot authentically embrace" (Christman, 2015) – a condition that resembles oppression and renders impossible any meaningful conception of the good from the perspective of the individual in question. To avoid misunderstandings, autonomy is not limited to liberal conceptions of a good life. In my understanding of autonomy, I am free to choose a life according to religious doctrine (however interpreted) or in line with the traditions of my village. What matters is that the decision to do so can be understood as a free decision based on a minimum degree of self-reflection, and not as a condition I am forced into. A valuable test for this threshold is the question whether I have the possibility to revise decisions that are central to my life (e.g., by leaving the village) without having to fear unreasonably high costs (e.g., a violation of my physical integrity). Of course, one might still doubt whether the interest in autonomy enjoys broad consensus among the world population. Importantly, though, the criterion of "general epistemic accessibility" (see 1.5.1) does not mean that all human beings *de facto* value these interests empirically. Instead, it means that all human beings have *good moral reasons* to value these interests if provided with sufficient information (Ladwig, 2011).

In the previous section, I argued that human rights express "standards of basic political legitimacy" (Forst, 2012, p. 711) and thus the moral minimum standard for governance actors. As partially autonomous international organizations exercising power on behalf of member states, but also in their own right, MDBs are part of the international political order and thus have a normative obligation to respect human rights. Specifically, since interests in physical integrity and autonomy are basic in the sense that they are necessary for a minimally good life, MDBs have a moral obligation to adopt adequate and effective policy and institutional provisions to guarantee the protection of these basic interests of all those affected by their governance.

To become effective, moral rights need to be translated into positive international law (Gosepath, 1998). In terms of legal substance, existing international human rights law build on the protection of basic human interests (Jacob, 2014). Specifically, the Universal Declaration of Human Rights, the ICCPR and the ICESCR as well as the set of specialized UN Human Rights Conventions on Genocide, Racial Discrimination, Women, Children and Disabilities (UN, 2017) are authoritative conventions protecting human rights in line with my definition. While defining specific rights, these conventions also leave considerable room for interpretation and organizational adaptation, provided that

spirit and purpose of the law are guarded and that the formal criteria of universality, equality, moral grounding, and general epistemic accessibility respected (Rüthers, 1999; Rüthers, Fischer, & Birk, 2013). As the next section (1.4.2) shows, moral reasoning concurs with legal scholarship and treaties in that MDBs have an obligation to respect human rights.

1.4.2   Legal Arguments for the Human Rights Obligations of MDBs

In line with eminent legal scholars (McDougal, Lasswell & Chen, 1980; Simma et al., 2002; Paust, 2010) and in line with the advisory opinions of the International Law Commission (UN GA, 2011 A/66/10, 2011), I argue that MDBs, and all other international organizations need to respect human rights law on legal grounds. In the following, I draw on international treaties, legal opinions and case law concerning the human rights obligations of MDBs. The analysis shows that compelling legal arguments exist establishing a legal obligation to respect and protect human rights among MDBs in their capacity as international organizations and in virtue of the human rights obligations of their member states on the respective Board of Directors. Moreover, the World Bank as an MDB possesses human rights obligations in virtue of its status as a "Specialized Agencies" of the United Nations.

First, as international organizations, MDBs possess legal personality. In parallel to other IOs, they thus derive human rights obligations from customary international law as well as from the general principles of law (McBeth, 2009; ILC, 2011). According to the International Law Association's final report on accountability of international organizations (2004), "Human rights obligations, which are increasingly becoming an expression of the common constitutional traditions of States, can become binding upon IO-s in different ways: through the terms of their constituent instruments; as customary international law; or as general principles of law or if an IO is authorized to become a party to a human rights treaty. […] Moreover, certain human rights obligations may have attained the status of peremptory norms" (ILA, 2004, p. 26). The here referenced "peremptory norms" have been specified by the International Law Commission as "norms that are clearly accepted and recognized," including "the prohibitions of aggression, genocide, slavery, racial discrimination, crimes against humanity and torture, and the right to self-determination." (ILC, 2001).

Secondly, executive directors (EDs) on MDB Boards of Directors are obliged to vote in line with the various specific human rights obligations of the countries they represent. According to the International Law Commission's Report on the effects of foreign debt and other related international financial obligations of States (2011),

> "All States, whether acting individually or collectively (including through international and regional organizations of which they are members), have the obligations to respect, protect and fulfill human rights. They should ensure that any and all of their activities concerning their lending and borrowing decisions, those of international or national public or private institutions to which they belong […] do not derogate from these obligations." (UN, 2011)

Similarly, the "Maastricht Principles on Extra-Territorial Obligations of States in the Area of Economic, Social, and Cultural Rights" states

> "[a]s a member of an international organization, the State remains responsible for its own conduct in relation to its human rights obligations within its territory and extraterritorially. A State that transfers competences to, or participates in, an international organization must take all reasonable steps to ensure that the relevant organization acts consistently with the international human rights obligations of that State." (EU, 2011)

Some MDBs have argued that EDs are formally their own staff, employed by the MDB and hence not representatives of member states. This argument not only runs counter to de facto member state control over their EDs (which management is well aware of). The interpretation is also untenable on legal grounds. In 2003 the UN Committee on Economic, Social and Cultural Rights (CESCR), clarified the obligations of member states in international organizations with regard to the right to water in a General Comment, stating that

> "States parties should ensure that their actions as members of international organizations take due account of the right to water. Accordingly, States parties that are members of international financial institutions, notably the International Monetary Fund, the World Bank, and regional development banks, should take steps to ensure that the right to water is taken into account in their lending policies, credit agreements and other international measures." (UN CESCR, 2003).

Three years before, in 2000, the Committee made the same observation with respect to the right to health (UN, 2000). Following the spirit of these judgements, MDBs are obliged all international, legal expressions of human rights, including the international "Bill of Human Rights" (including the UDHR, the ICCPR and the ICESCR) as well as the set of specialized UN Human Rights Conventions (on Genocide, Racial Discrimination, Women, Children, Disabilities).

Third, the World Bank in particular is also a specialized agency of the United Nations. This relationship exists in virtue of an agreement between the World Bank and the UN's Economic and Social Council (ECOSOC; UN – IBRD, 1946). Having this status, the World Bank is obliged to promote member states compliance with the UN Charter. Where conflicting obligations exist, adherence to the UN Charter remains the foremost duty of UN member states. According to Art. 103 of the UN Charter, "in the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail." (UN, 1945). The UDHR ICCPR and the ICESCR, have been recognized as the key documents to interpret the rights provisions in the UN Charter (De Schutter, 2010, p. 50). As a consequence, the World Bank's own articles of agreement and/or operational policies cannot possibly supersede its human rights obligations (ILC, 2011) [14]. Notably, the World Bank repeatedly came to the

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14   The argument that the World Bank's Articles of Agreement (AoA) prescribe an "a-political" role for the World Bank that does not allow for human rights obligations has been repeatedly made by World Bank staff during the review and was confirmed in my interviews at the legal department.

conclusion that it was bound by human rights by virtue of being an IO and a UN agency itself. Already in 1998, the World Bank published a report entitled "Development and Human Rights: The Role of the World Bank," which stated on page two that it had "always taken measures to ensure that human rights are fully respected in connection with the projects it supports." In 2006, the World Bank's Senior Vice-President and General Counsel Roberto Danino – a strong advocate of a human rights centered development approach - wrote in his "Legal Opinion on the World Bank and Human Rights," that the institution should "recognize the human rights dimensions of its development policies and activities, since it is now evident that human rights are an intrinsic part of the Bank's mission" (World Bank, 2006).

To sum up, international organizations play an increasingly important role in solving global policy challenges. Multilateral development banks are no exception to this. Despite current trends pointing in a different direction, long-term empirical trends indicate an enhanced (not less) exercise of MDB power across all dimensions of the policy cycle. While there is little debate that MDBs are important actors in the field of development, disagreement exists with regard to the standards to which MDBs should adhere to be considered legitimate. A comparison of models for global order with cosmopolitan intent against the background of empirical trends suggested that MDBs should be seen as actors within a framework of cosmopolitan pluralism. Accordingly, in the absence of meta-governance by some transnational authority, the specific responsibilities of MDBs involve the adoption of policy and institutional reforms that guarantee deliberation and accountability. This work focusses on MDB obligations to guarantee accountability, conceptualized as direct accountability toward those affected by MDB governance. Since accountability may rest on different standards, I further showed that MDBs have a moral duty as well as a legal obligation to protect human rights. While the former results from the unique quality of human rights to protect basic human interests, the latter relates to MDB's status as international organizations and the obligations of their member states on the executive boards. The World Bank in particular has additional human rights obligations in virtue of its nature as a specialized UN agency.

1.4.3   MDB Obligations in light of larger Empirical Trends in Global Governance

So far, I have argued in favour of human rights as the standard of direct accountability in global governance on moral and legal grounds. In this section, I intend to argue that these normative reasons are particularly and additionally compelling in light of the larger *empirical* developments in global governance. If one agrees that we should care about the normative legitimacy of political orders on the international level (thus including MDBs) as well, it is a matter of intellectual honesty on behalf of the researcher to broaden the perspective and to ask, which model of a global order is likely to guarantee legitimacy against the background of existing empirical trends. Taking up this task, Michael Zürn differentiated ideal-typical proposals for "models of global order

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Yet, this argument does not hold, even if one accepts the premise that development could ever be "a-political" (while human rights are "political") and, secondly, that the AoA should be interpreted in this way.

formulated with a cosmopolitan intent" (Zürn, 2016, p. 91), namely: (a) the intergovernmental model of democratic states, (b) cosmopolitan democracy, and (c) cosmopolitan pluralism.[15] All three share a cosmopolitan intent as they are built on notions of "individualism (human beings are the ultimate units of concern), generality (all human beings are of concern), and universality (all human beings are of equal concern)" (Zürn, 2016, p. 90; see also Pogge, 1994, p. 89). All models share a commitment to democracy and human rights protection among states and, critically, among international organizations. While scholars developed and discuss these three models for international organizations more broadly, the arguments apply to the human rights protection of MDBs more specifically as well. In agreement with Zürn, I hold that only the third model – cosmopolitan pluralism – is realistic in light of current empirical trends. The broader implication here is that we should understand MDBs (and IOs more generally) as part of an evolving order characterized by cosmopolitan pluralism. Such a contextualization matters, as we can only fully grasp the moral obligations of MDBs if we agree that neither MDB member states, nor any supra-national meta-authority is capable of enforcing rules and values in the foreseeable future internationally. In a framework of cosmopolitan pluralism, international organizations should guarantee deliberation and accountability to secure their legitimacy (Geis et al., 2012). As stated above, this work focusses on accountability.

First, proponents of an *intergovernmental model of well-ordered states*, such as Thomas Christiano, Robert Dahl, Andrew Moravcsik and John Rawls, argue that the value of equal respect toward all human beings can best be realized in an international system composed of sovereign states which interact on the basis of consent. As a result, only national representatives should make fundamental decisions in international institutions, always retaining the possibility to withdraw any power they have conferred upon them. Moreover, only national governments are allowed to implement decisions and only they should have the power to rule over individuals directly (Scharpf, 1996). The increase of IO responsibilities indicated above sharply contradicts the premise of the intergovernmental model of democratic states, maximum national sovereignty. Moreover, it faces the normative challenge that a majority of states in the international system are not democratic. While the model points us toward enhanced efforts of democratization, the empirical record indicates that global levels of democratization stagnate or even decline since 2005 (Plattner, 2015).

In the second camp, we find authors who argue for a transformation of the international order into a *cosmopolitan democracy* (Archibugi, 2008; Held, 1995). Proponents of this model envision a global parliamentary assembly to secure congruence between decision-makers and those affected, but also to regulate global problems from climate change to issues of peace and security. Moreover, Pogge (2002) placed a particular emphasis on the redistribution of resources. Pogge argued in favor of greater political centralization on the global level to achieve distributive economic justice (Pogge, 2002, p. 149). While we do observe a slight transfer of powers at the level of rule enforcement,

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15   Michael Zürn distinguishes between *four* basic models, including the model of a Minimal World State (Zürn, 2016). Yet, because this model is a hybrid between the second and the fourth, I here only distinguish between three basic types. Among all of these, hybrids are possible.

states remain unwilling to give up their sovereignty along a range of sectors (Wolf, 2000). For instance, there are virtually no signs of centralized economic redistribution empirically (Zürn, 2015). In addition, it is not clear at all how the organization of global elections, or global representation could be organized (Müller, 2008). In part, this is due to the fact that we lack a sufficient common understanding of values and perceptions to bring about a global demos (Zürn, 2000). Proponents of *cosmopolitan pluralism* (John Dryzek, Lisbeth Hooghe & Gary Marks, Nico Krisch, Matthias Kumm, Terry Macdonald, Jürgen Neyer) share the view that the state has lost its central steering capacity. Instead, international institutions assume central stage in regulating global affairs. International Organizations are the most prominent representatives of such institutions. According with the increasing need for coordination they have over the last decades, acquired ever more responsibilities. Yet, cosmopolitan pluralists are skeptical of emerging forms of centralized steering on the global level. If one aspires to take empirical developments seriously in thinking about the future of global governance, they argue, we need to take multiple loci of power, and accordingly, multiple patterns of legitimation into account that are, at a minimum, built on deliberation (Dryzek, 2008) and accountability (Scholte, 2011). Current empirical trends provide strong reasons to consider the question of legitimate global governance in the framework of cosmopolitan pluralism, rather than the first two (Zürn, 2015). While IOs gain increasingly more responsibilities, they do not—corresponding to cosmopolitan pluralism—assume superiority in a static way either. Rather than constituting a comprehensive regime, rule on the international level takes place with regard to specific scope and domains (Baldwin, 2013). Hence, the degree to which an IO exercises power may vary considerably between issue areas, countries and the availability of alternatives. Due to the amount of actors in international relations with conflicting, co-existing or overlapping mandates and spheres of influence, the attribution of responsibility becomes increasingly difficult for civil society and academics as well as for IO staff (Daase & Deitelhoff, 2015). However, as the previous section demonstrated, the lack of a clear center of power does not imply the absence of IO rule. Provided that *ought* implies *can* at least to some degree, we should take these empirical developments seriously also from a normative point of view (Zürn, 2015) and conceptualize IO governance as an independent order with its own legitimacy requirements, independent from the other levels of government. In line with these preceding thoughts, I agree with those authors suggesting to define substantive legitimacy requirements rather than templates of institutional design (i.e., proponents of cosmopolitan pluralism). Several authors of this school of thought proposed deliberation and accountability as two substantive criteria around which a consensus emerges (Buchanan & Keohane, 2006; Deitelhoff, 2012). *Deliberation* demands that all perspectives and arguments enter the decision-making process, rather than pre-supposing a "Demos" as the sovereign of decision-making. The aggregation of preferences and strategic bargaining between competing interests is replaced by public reasoning (Deitelhoff, 2012). As deliberation can be organized in a decentralized manner, it thus promises to mitigate the representation problem. What is more, deliberation itself has been theorized to contribute to the very creation of a global Demos (Habermas, 2005). Similarly, Dryzek argued in favor of discursive democratization "as a process rather than a model, which can be applied to all levels in complex multi-level governance, from

the local to the global." (Dryzek, 2008, p. 470). Building on the work by Forst (1994; 2007; 2010), Scholte (2011), Buchanan and Keohane (2006), though, I focus on *human rights accountability* as a minimum standard IOs (and by extension, all MDBs) need to secure to be considered legitimate from a normative standpoint. In particular, Forst's (2007) work on a "basic right to justification" has provided a powerful philosophical standing for accountability regimes wherever governance takes place. For Forst, democratic decision-making ensures the fairest distribution of this right, as all those affected by political rule have an equal chance to demand justification. Following up on this research, for Bovens, Goodin, Schillemans, and Mansbridge (2014) the core of accountability is about providing answers toward those with a legitimate demand for justification (see section 1.3). While I agree that both deliberation and accountability are necessary to secure MDB legitimacy, a focus on both would go beyond the scope of this work (see Hack, 2017, for a valuable recent contribution focusing on the deliberative quality of the WTO).

Concluding this chapter, I have shown that my argument for human rights accountability as a minimum requirement of legitimate MDB governance (among other requirements) enjoys widespread support among political philosophers with a focus on moral theory, legal scholars and political theorists with a cosmopolitan impulse who take contemporary trends in global governance seriously. While human rights express the equal moral standing of human beings in virtue of an equal respect for their basic needs, accountability expresses "a belief that persons with public responsibilities should be answerable to 'the people' for the performance of their duties" (Dowdle, 2006, p. 3). With this in mind, I now turn to transnational social movements and their advocacy for precisely this human rights accountability of MDBs "on the ground".