

Experts Dialogue, February 7, 2022

What's missing: What particular global governance proposals not mentioned in the OCA report - whether institutional, legal, normative or operational – should be considered by Member States and the Secretary-General's proposed High-Level Advisory Board on Global Public Goods, on the road to the 2023 Summit of the Future?

Submission by Roberto Bissio, coordinator of Social Watch

Last January 26, ten former presidents from Latin America and Spain demanded “that the International Monetary Fund **takes responsibility** for having granted a record loan to the [Argentinian] government of Mauricio Macri of USD45 billion to be paid back in a short time, absolutely impossible to comply with, in order to benefit him electorally and to limit the next administrations.”¹

This serious accusation to an international organization was signed also by several ex-foreign ministers and senior legislators. Prominent legal experts have concluded, after detailed analysis of the SBA, and the IMF's own ex-post evaluation that “substantive rules that enable the IMF's functional competence to provide balance of payments support to its members—set forth in Article I of the Articles of Agreement—were violated in the SBA in a way that is too manifest to be open to reasonable doubt, thereby raising suspicion that the SBA's approval was ultra vires (beyond the powers)”². When international organizations act beyond their legal capacity, they are deemed to act ultra vires. It follows that any acts that overstep the powers of international organizations—as determined in their founding treaties—are invalid and void.

The SBA did not meet any of its declared objectives and, as a result, poverty doubled in Argentina from 20 to 40% of the population and the country still owes \$45 billion to the IMF, risking a default.

But the IMF has no review body in its governance. What are the options for the million of victims whose human rights (to health, education, social security) have been massively violated by this agreement? Since the IMF is a member of the United Nations, the UN General Assembly and the International Court of Justice have the authority to judge over the legality of its procedures, but there is no clear procedure as to how to assess damages caused or the unjust enrichment of the IMF, that is still receiving interests and penalties from the SBA, or how to determine the liability for damages of staff members and officials who may be found to have provided negligent advice to the Executive Board regarding the Fund's capacity to enter into the agreement.

The IMF has recently observed “the largest debt surge since World War II, with global debt rising to \$226 trillion” creating a situation in which “now governments must navigate a world of record-high public and private debt levels, new virus mutations, and rising inflation.”³

Dozens, maybe up to a hundred countries might need IMF balance of payments support over the next months. The risk of new “mistakes” or “blatant illegalities” by an organization that lacks proper accountability and appeal mechanisms are too high to be ignored.

In the framework of the AOC discussions about governance, the UN GA should ask the International Court of Justice for advice on the legal paths for governments and victims to

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<https://www.perfil.com/noticias/politica/10-expresidentes-america-latina-pidieron-fmi-asuma-responsabilidad-por-prestamo-mauricio-macri.phtml>

² Patricio Ferreira Lima, Karina, The IMF's 2018 Stand-By Arrangement with Argentina: An Ultra Vires Act? (January 10, 2022). Available at SSRN: <https://ssrn.com/abstract=>

³ <https://blogs.imf.org/2021/12/15/global-debt-reaches-a-record-226-trillion/>

challenge the legality of certain decisions of international organizations that lack proper review mechanisms and the procedures for remedy and the assessment of losses and damages.