



IMF's Surcharges as a Threat to the Right to Development

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Abstract

This article focuses on the implications of the IMF's surcharges policies, jointly with its *de facto* preferred creditor status, on the right to sustainable development of sovereign borrowers. The article argues that, while surcharges are not effective in limiting access to IMF credit, they inequitably distribute the IMF's operating costs, are disproportionate, pro-cyclical, very costly for developing countries, and non-transparent. Furthermore, if surcharges are theoretically a way to protect the IMF from potential risks of default, the article questions the IMF's *de facto* preferred creditor status, as it precisely denies the possibility of granting debt relief in case of insolvency, ultimately affecting the right to development of —mainly— middle-income borrowing countries.

Keywords Developing countries · Global Finance · Human Rights · Multilateral Loan Conditions; Preferred Creditor Status

International Financial Institutions and Human Rights in Context

The International Monetary Fund (IMF) has a central role in the international financial architecture. This institution is not only responsible for helping member countries facing economic —balance of payments— crises, but also, in practice, shapes national economies through its recommendations (policy advice) and conditionalities associated with its loans (financial assistance).

While the human rights implications of the IMF's policies are evident, this organization has been arguing for decades it is above international human rights law (Gianviti

2005), which includes the right to development. As the Special Representative of the IMF to the United Nations (UN) stated in a letter in 2017, 'the IMF has not accepted the Declaration on Human Rights as the motivating principle of our operations' (IMF 2017). Yet, the UN Committee on Economic, Social and Cultural Rights (CESCR 2016: 3) has been crystal clear about the IMF and World Bank's human rights obligations:

The Committee is fully aware that, in the case of IMF or IBRD, the relevant Articles of Agreement establishing the organizations have sometimes been interpreted by the organizations as not requiring them to include human rights considerations in their decision-making. The Committee does not agree with such an interpretation. In discharging their duty to comply with human rights under international law, international institutions are not exercising powers that they do not have, nor are they taking into account considerations they would be obliged to ignore based on their statutes; rather, it is in the exercise of the powers that have been delegated to them by their member States that they should refrain from adopting measures that would result in human rights violations. Moreover, as specialized agencies of the United Nations, IMF and IBRD are obligated to act in accordance with the principles of the Charter of the United Nations, which sets the realization of human rights and fundamental freedoms as one of the purposes of the Organization, to be achieved in

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particular through international economic and social cooperation.

Being undeniable both the impacts of the IMF's practices on human rights and the fact that it is bound by international human rights law (Bohoslavsky and Cantamutto 2022), this article focuses on the implications of the IMF's surcharges policies—which make certain loans very expensive for borrowing States—, jointly with its *de facto* preferred creditor status—as it denies the possibility of granting debt relief in case of insolvency—, on the right to development of sovereign borrowers. Studying integrally surcharges and creditor status issues is justified, since surcharges are said to be necessary to minimize the IMF's exposure to default risks, while its absolute preferred creditor status protects it against defaults. There is an evident overlapping between (and duplication of) the goals pursued by both instruments, which ends up draining twice as much valuable resources from debtor countries.

IMF's Policies and the Right to Development

The conditionalities associated with public debt agreements with the IMF are not only the result of the IMF's *de facto* position of power vis-à-vis low- and middle-income countries, but are also underpinned, in the first instance, by a purely economic conception of development that is in contradiction with the right to development.

In low- and middle-income countries, for example, a number of infrastructure projects have a direct impact on access to quality health care, free public education, and mobility, among others. To do this, States may mobilize domestic resources or incur debt with different creditors. However, it is unlikely that these countries will establish direct taxes on wealth and income, or on windfall profits in contexts of crisis or emergency, given the strong lobbies of the economic-financial elites, which are often accompanied by other forms of State capture (Cañete Alonso 2018). External debt seems to be one of the few options available, as suggested by the high level of public indebtedness observed in developing countries in the post-pandemic. Given the context of subordination in which debtor States find themselves, these loans are often accompanied by conditionalities, which are generally not negotiated on equal terms between States, let alone with the participation of populations in situations of structural vulnerability, ultimately having a negative impact on human rights (Independent Expert 2019).

IMF's reactions in this regard are not consistent: the IMF tends to claim success when loans contribute to development (Center for Economic and Social Rights 2021), but avoids being accountable for its actions when the loan granted generates pernicious effects on human rights (Scali 2021; de

Moerloose et al. 2021), or even on macroeconomic indicators. Moreover, the CESCR (2018: para. 16), referring to the 'Obligations of a State party under the Covenant as a member State of international financial institutions', regretted that IMF member States 'have [n]ot sufficiently exercised their great influence to ensure that the conditions imposed by these institutions for the granting of a loan do not result, in the borrower State, in an unjustified regression in the enjoyment of the rights recognised in the Covenant'.

With regard to the disputes over the conceptions of the right to development (Rajagopal 2021), it suffices here to reconstruct two of them, which are at opposite ends of the spectrum. The first one focuses on the economic aspects, while the second conceives this right in a rather comprehensive way as sustainable development. For the former, public debt, as well as conditionalities and surcharges are attributable to development 'costs'. This conception has come hand in hand with the recipes of the Washington Consensus applied in the 1990s in the Global South, whose economic and political—and even cultural—frameworks still persist. The recipes are the same: fiscal discipline, financialization of State and household coffers, labour flexibilization, privatization of public services, opening and deregulation of balance of payments accounts, which, among other things, favors extractivism. Behind these recommendations, there is an idea of infinite expansion of the economy and consumption as an engine that would produce spillover effects, generating economic and social welfare for the population as a whole. However, the spillover never reaches the populations in structural inequality; rather, most social groups usually end up just 'paying' the costs of debt without realizing its potential benefits. In addition, this development model has led to the excessive exploitation of nature and, thus, to climate catastrophe. Although this affects the entire planet, it is the Global South that suffers—and will suffer—the worst consequences, which is also in an unequal position to demand a more equitable distribution of financial contributions to mitigate these outcomes (Goldston 2022: 107)¹ and to discuss the conceptions of energy transition (Svampa and Bertinat 2022). At the same time, the IMF does not consider the demand for debt reduction or cancellation made by

¹ A/HRC/50/57, 2022, para. 43, sustaining that, although 'developed countries have committed to lead on mobilizing climate finance in line with their common but differentiated responsibilities under the Paris Agreement, more than three quarters of climate finance is channeled domestically. Mechanisms to ensure access, inclusiveness, safeguards and redress are often lacking or are not implemented effectively, for example in the case of those related to indigenous peoples. Developed countries must provide enhanced and additional support for activities addressing loss and damage associated with the adverse effects of climate change and the impacts of both economic and non-economic losses on resources and human rights, including to culture, life, livelihoods and territory –benefitting the most vulnerable first.'



low- and middle-income countries, which are in fact environmental creditors, since they have hardly contributed to the climate catastrophe and are the ones that have cushioned its effects the most due to their richness in biodiversity.

All of the above is opposed to the other conception of the right to development. This interpretation is derived from the Universal Declaration on the Right to Development (UN 1986), as an individual ('every human being') and collective ('all peoples') human right 'to participate in' 'contribute to', and 'enjoy' development. This definition concerns not only economic aspects, but also social, cultural, and political ones, so that 'all human rights can be fully realized'. Development must be sustainable, that is, meeting the needs of the present generation must not compromise the ability of future generations to meet their own needs. This includes the right to environmental protection (IACtHR 2017; IACtHR *Llaka Honhat v. Argentina* 2020; IACHR 2021b) and the 'right to a climate system capable of sustaining human life' (Rodríguez Garavito 2022: 16).

In this sense, States should work together to strengthen the realization of human rights (UN 1986, art. 6), 'cooperate with each other to achieve development and remove obstacles to development' and 'perform (...) their duties in such a way as to promote a new international economic order based on sovereign equality, interdependence, common interest and cooperation among all States' (UN 1986, art. 3, para. 3). However, this is not fulfilled by the IMF — nor, obviously, by the most powerful States in international lending agencies—: '... onerous debt service obligations and related conditionalities often undermine country ownership of national development strategies, thereby threatening the right to development' (Hurley 2018: 252, 254). In addition, restrictions on the rights of vulnerable populations are extreme. Specifically, the UN Working Group on the issue of discrimination against women and girls (Working Group on the issue of discrimination against women and girls 2020, para. 12) highlighted that the lack of investment by governments in public services and infrastructure, 'as well as persistent cuts in funding (as a result of conditionalities imposed by international financial institutions)', often have a more severe impact on the right of women and girls.

For example, as a result of the agreement signed by the Argentine government with the IMF in 2018, which required disbursements equivalent to 960% of its quota, Argentina would pay between 2021 and 2026 around 4,096 million dollars in surcharges, which exceed 3,642 million dollars in charges and commissions of the loan. In other words, surcharges more than double the cost of the agreement (they raise it by 113%). The surcharges paid by Argentina are equivalent to more than half of what the IMF expects to collect for interests and commissions in this period. In the current context, these interests hinder vital investments, given the direct relationship between the availability of fiscal

resources and the infrastructure works and public services necessary to continue generating material conditions to guarantee the effective enjoyment of a number of human rights, particularly the rights to drinking water, sanitation, and decent housing, among others. In 2021, Argentina was requested to pay in surcharges more than its total budget allocated to the Ministry of Justice and Human Rights and the Ministry of Environment and Sustainable Development combined.

Jointly with the IMF's persistent refusal to reduce the capital or interest on its loans —even in the face of dramatic insolvencies of sovereign debtors—, surcharges only postpone public investments that are essential to realize the right to development. Thus, instead of contributing to sustainable development, the IMF, through these policies, harms this process.

IMF's Surcharges Policies

Surcharges are the interest imposed by the IMF above the credit line rate, applied to countries that require agreements that exceed the amount of their quota according to their shareholding in the organization. Each IMF member country has a contribution quota that entitles it to access a certain amount of funds in the event of an agreement. When the agreement exceeds 187.5% of the assigned quota, surcharges imply an increase of 200 basis points above interest. If the loan repayment exceeds 36 or 51 months (depending on the type of credit), an additional 100 basis points are applied (IMF 2021a). These increases in interest rates convey the idea that the IMF grants concessional loans, which becomes even more problematic in an international context of near-zero interest rates.

These surcharge payments are supposedly set for precautionary purposes. In other words, they seek to reduce the IMF's exposure to the risk of default (IMF 2021b). In recent years, the weight of surcharges has grown to the point of becoming one of the IMF's main sources of income (accounting for 41% of income) (Arauz et al. 2021).² Despite their significance, the IMF would obtain positive results even if it eliminated surcharges (Arauz and Hansen 2022). Therefore, the IMF does not depend on them to function: surcharges are its main source of income, but still an unnecessary one. On the other hand, it is worth noting that the IMF's main lendable resources do not come from the flow of payments, but from the capital contributions of member countries (Galant and Khan 2022). Hence, these interests do

² A relevant part of the precautionary funds provided by surcharges was withdrawn in the form of pension payments to agency officials (Arauz et al. 2021; IMF 2021b).



not really expand the lendable capacity. Thus, surcharges are a central source of income, but unnecessary for the purposes of the IMF's operation, as well as for its lending capacity.

According to the IMF, surcharges would be a deterrent and seek to discourage excessive debt taking (IMF 1997). The higher cost would provide an incentive to require fewer funds and repay them sooner. They would aim at limiting access to liquidity in order to force the fastest possible return to credit markets. In other words, the IMF assumes that the countries that get these credits are affected by a liquidity crisis, not a solvency one. This situation could fit the case for which surcharges were created in 1997, in response to the crisis in Southeast Asia. However, their use has expanded to other countries under a wider array of agreements—in the framework of the 2000 and 2009 reforms—which is out of context and unjustified in light of the diagnosis of the supposed original purpose of surcharges. Its expansion has affected economies with solvency problems (Arauz et al. 2021).

This policy applies to middle- and high-income countries, which obtain their credits from IMF's general resources. Poorer countries receive financing through lines of credit on concessional terms for poverty reduction, in which surcharges are not imposed. This is part of a major distinction being made between poor and middle-income countries. The underlying assumption is that the latter can—and should—tap the credit market as soon as possible. However, it has been shown that large IMF financial assistance can in fact crowd out private lending, as the combination with its preferred creditor status is expected to increase the loss in –probable– case of default (Krahnke 2020). Even more, as a hundred social organizations pointed out in an open letter, ‘it's worth noting that governments aren't always fully aware of the existence of surcharges, and they are hidden from public scrutiny, as the IMF doesn't identify them in their staff reports or their publicly available financial statements. Surcharges resemble the hidden fees that credit cards charge desperate consumers' (Global Action for Debt Cancellation 2022). Thus, it is a non-transparent mechanism (Galant and Khan, 2022).

By the end of 2021, the IMF had general resources credits with 52 countries, 14 of which exceeded 187.5% of their quota, making them affected by surcharges. In order of quota utilization, these countries were Argentina, Ecuador, Egypt, Angola, Ukraine, Mongolia, Gabon, Tunisia, Barbados, Albania, Jordan, Pakistan, Armenia, and Georgia. All these countries faced surcharges for credits agreed before the pandemic, and, in five cases, it was for programmes already implemented (Albania, Georgia, Tunisia, Egypt, and Mongolia). The payment of surcharges meant the loss of funds available to deal with the pandemic in a situation of global crisis without precedent in a century. This is a contradiction in terms, since surcharges aggravated the vulnerability

of countries that required help because they were in crisis (Bohoslavsky et al. 2021). In this sense, surcharges have a pro-cyclical behavior, that is, they increase as the crisis unfolds, making it worse. Therefore, they do not serve as a mechanism to accelerate payment, but rather to punish countries for needing debt (Bohoslavsky et al. 2021).

According to the European Network on Debt and Development, these 14 countries will pay about 7.9 billion dollars in surcharges between 2021 and 2028, accounting for a 64% increase in the IMF's borrowing costs (Munevar 2021). During the height of the pandemic crisis, between 2020 and 2021, surcharges totaled 2,356 million dollars. This figure is 2.4 times the amount allocated by the United States, Europe, the United Kingdom, and Japan to fund the Catastrophe Containment and Relief Trust, which grants debt relief to poor countries. These rich countries only provided the equivalent of 965 million dollars to deal with the crisis in the form of relief in those two years. Hence, over-indebted middle-income countries contributed more to the IMF to handle the situation of indebted poor ones, in comparative and absolute terms, than rich countries. It certainly does not seem like an equal situation between rich and middle-income nations, nor is it sustainable for the latter. Of course, this has a disproportionate and unjustified effect on the rights of populations living in vulnerable situations in these latter countries. The funds paid for surcharges during the pandemic implied a concrete cost in terms of the right to development, considering that they could have been used, for example, to vaccinate the population (Stiglitz and Gallagher 2022).

Surcharges have not received much attention from the general public until recently (Gallagher 2021). Despite criticism from civil society (Bretton Woods Project 2022), the G24 (2021), and the UN crisis response group (2022), they have not yet had a thorough review. At its December 2021 meeting, the IMF Board of Directors postponed this discussion due to opposition from the United States, Japan, Germany, and Canada. It was argued (IMF 2021c) that, even with these surcharges, IMF credits are particularly cheap and serve as a buffer to avoid higher risks. Strikingly, the organization itself had recognized a few years earlier that, precisely, because of this low level with respect to market rates, surcharges did not represent a disincentive to borrowing (IMF 2016). Thus, the agency itself points out that surcharges seek to limit excessive borrowing, but at the same time recognizes their ineffectiveness.

In fact, surcharges function as a tool for intervention in domestic policy, as the IMF monitors middle-income countries in their own territory. Unfortunately, the purpose of such monitoring is not that of facilitating the realization of the right to development of populations in structural inequality and with little possibility of access to the effective enjoyment of the right to drinking water, decent housing, health, and quality education and protection. In this



sense, surcharges are regressive in terms of human rights, including the right to development, as they redirect scarce fiscal resources in favor of payment to a solvent creditor. This contradicts Article 2 of the International Covenant on Economic, Social and Cultural Rights, which establishes that States must allocate the maximum of their available resources to ensure the progressive realization of these rights. It has been indicated that the payment of surcharges limits the ability of States to invest in care, health, or education infrastructure, which particularly affects women (Galant and Khan 2022).

As a result, countries tend to avoid further borrowing from the IMF, because the lower rates charged with respect to the market are accompanied by a heavy dose of monitoring and conditionalities on economic policies. Thus, the savings in rates are more than compensated by the loss of sovereignty. However, countries do not get over-indebted with the IMF since it has cheap credit, but because they are in crisis and other alternative financial sources are closing (Galant and Khan 2022). Even when they turn to the IMF, countries try to avoid defaulting on payments to the institution (Bretton Woods Project 2021), due to the high reputational costs that such a situation entails: without the IMF's endorsement, access to funds from other international organizations is lost and private credit becomes utterly expensive.

Therefore, surcharges disproportionately affect countries in crisis. If nations resort to IMF credit in excess of their quotas when experiencing severe crises, surcharges impose an extra cost in a situation of particular vulnerability. This violates the IMF's fundamental mission of providing temporary financing to countries without resorting to measures that are detrimental to national prosperity (Article 1 paragraph V of the Articles of Agreement). By forcing the payment of surcharges in a crisis situation, these interests become pro-cyclical, since they induce countries in economic difficulties to direct their efforts to servicing the debt instead of taking advantage of their meager resources to combat the crisis or its effects on income, health, education, or labour, among others.

Thus, surcharges: a) are not effective in limiting access to IMF credit; b) inequitably distribute the IMF's operating costs; c) are disproportionate; d) are pro-cyclical; e) are very costly for developing countries, directly affecting their right to development; and f) are not very transparent. What is particularly strange is that the IMF applies these preventive surcharges to hedge against potential impact risk, while at the same time considering itself as a privileged creditor, so that the possibility of default is taken as an ontological impossibility, even in the event of a crisis. Why impose surcharges to protect against risk of default when the organization itself claims (and practices) that its credit has collection preference over any other creditor of the common debtor?

Preferred Creditor Status. Out of Thin Air?

In international practice, it is generally believed that, given its nature as a lender of last resort and its "financial firefighter" function (emergency lending) in situations where no other lender would be willing to assist countries in financial distress (Krueger 2002; Roubini and Setser 2004: 252–6), the IMF enjoys an absolute creditor preference in case of insolvency of debtor States. It has also been explained that, in fact, the IMF has been reimbursed decades before any other creditor (Mussa 2006: 421; Boudreau and Gulati 2014).

Furthermore, it has been argued that the IMF's alleged absolute preferred creditor status prevents moral hazard both on the side of debtor States, which might opportunistically over-borrow or opt for giving priority to other creditors, and on the side of other creditors, as they should seriously assess the risk since, in case of default, the IMF would receive preference (Bianco 2021). However, the preferred creditor status also creates moral hazard issues regarding the quality of the IMF's own risk assessments (see for example the Argentine case, IMF 2021e). Nevertheless, it has been indicated that the IMF cannot accept debt relief (IMF 1988; IMF 1989, 2021d) even in the face of evident insolvency of a debtor State, given the impact that payment sovereign defaults could exert on the efficiency of the IMF as a cooperative financial institution.

Yet, the IMF's Articles of Agreement do not acknowledge—even implicitly—its preferred creditor status (Rutsel Silvestre 1990; Raffer 2016). It has been claimed that this is a *de facto* preference (something recognized even by the IMF, (FMI 2021d). Furthermore, do statutory restrictions exist that prevent the IMF from acknowledging an insolvency situation and consequently granting debt relief? The Heavily Indebted Poor Countries (HIPC) have proven that there is space for economic and legal maneuver (and, in particular, a number of arguments based on human rights, including the right to development) to accept that, given certain circumstances, the IMF has to grant debt relief (Raffer 2009).

It has also been studied whether the IMF's alleged preferred status would be based on customary law, as a source of international law (Boudreau and Gulati 2014). However, the existence of customary law requires consistent state practices and the legal belief (*opinio juris*) that the behavior in question is in accordance with the law. In the case of IMF loans, and contrary to what is usually believed, debtors' criticism has been continuous, to the point that there has been a number of arrears in this context (Oeking and Sumlinski 2016). Even when these arrears did not necessarily translate into debt relief, these debtors challenged the IMF's preferred status (Boughton 2001: 757–846).



Equally important, the IMF has granted debt relief in certain cases, such as what happened with the HIPC and other related programmes in extraordinary situations (like during the COVID-19 pandemic with a few countries, through the Catastrophe Containment and Relief Trust). The IMF Interim Committee actually ‘urged all members, within the limits of their laws, to treat the Fund as a preferred creditor’ (IMF 1988, stress added). The IMF’s preferred status is, therefore, an endogenous outcome of the relationship between the countries concerned and their creditors rather than a legal mandate.

The Sovereign Debt Restructuring Mechanism (SDRM) proposed and promoted in 2002 by the IMF did consider the institutionalization of the preferred creditor status. However, as we know, this project sank and, with it, the possibility of building strong consensus among IMF’s member States on the terms of the SDRM. The judgment in *NML Capital, Ltd. v. Republic of Argentina* (2012)³ is also illustrative for the debate discussion regarding the IMF’s legal priority, as this sentence gave the *pari passu* clause in sovereign bonds an expansive meaning, denying in practice the IMF’s preferred status in relation to a loan from this lender to Argentina.

To summarize, there is no legal source in international law that acknowledges an absolute preferred creditor status to the IMF. Actually, this institution has granted a number of debt reliefs to the poorest and most indebted countries in recent decades. There are no legal impediments to doing so with middle-income countries, which desperately need a haircut in their debts (capital, interests, surcharges) to be able to fulfill their own international economic and social rights obligations towards their own populations. Public lenders and donors have a responsibility to participate in debt relief programmes and restructuring negotiations in good faith (United Nations 2018, Principle 15.2).

Clearly, given the IMF’s paramount repayment priority, the quality of the loans granted becomes irrelevant (Schadler 2014). This certainly creates the risk of disconnecting decisions from outcomes, which is, precisely, a basic economic principle promoted by International Financial Institutions (IFIs) among their member States. Considering that, after the failure of the economic programmes financed by the IMF, it grants new loans to try to remedy or stabilize these critical situations, it can be asserted that the IMF benefits from its own mistakes because, being its preference (covering both capital and interests) guaranteed, the greater the amount of the credit and the repayment term, the greater the profits (surcharges), regardless of the final destination of the borrowed money or the fate of the economic policies imposed on debtor States.

As Tito Cordella and Andrew Powell (2019) have recently explained in a World Bank Policy Research Working Paper, ‘if IFIs priced loans to risk, as private lenders do, then this would be tantamount to admitting that their lending is risky and that borrowers may then default. Taking this logic to the limit, IFIs would then become just one more (defaultable) lender among many, and lose their preferred creditor treatment’. Surcharges work as an interest rate based on the default risk, precisely when the right to development is under serious threat.

Concluding Remarks

The IMF continues to argue that it is above international human rights law, which includes the right to development. This article focused on the implications of the IMF’s surcharges policies—which make certain loans very expensive for borrowing States—, jointly with its *de facto* preferred creditor status—as it denies the possibility of granting debt relief in case of insolvency—, on the right to development of sovereign borrowers.

From what has been previously explained, surcharges policies a) are not effective in limiting access to IMF credit; b) inequitably distribute the IMF’s operating costs; c) are disproportionate; d) are pro-cyclical; e) are very costly for developing countries, directly affecting their right to development; and f) are not transparent.

What is particularly excessive is that the IMF applies these preventive surcharges to hedge against potential impact risk, while at the same time considering itself as a privileged creditor, so that the possibility of default is taken as an *ontological impossibility*, even when sovereign borrowers face insolvency. Why impose very costly surcharges to protect itself against risk when the same organization claims (and practices) that its credit has absolute collection preference over any other creditor of the common debtor? In any case, this article also explained that, in fact, there is no legal source in international law that acknowledges an absolute preferred creditor status to the IMF.

In 2010, the IMF itself explained that ‘specifically, where a member requests an amount of the Fund’s general resources that would result in the Fund’s holdings of the member’s currency exceeding 200 percent of quota, the Fund may require, as a condition for granting the request, that the member pledge collateral consisting of acceptable assets that, in the opinion of the Fund, are of sufficient value to protect the Fund’s interests’ (IMF 2010: 19–20). It is totally acceptable that creditors try to protect themselves against their debtors’ defaults. What seems excessive and unnecessary is to levy high surcharges and be fully repaid in preference to any other creditor, plus

³ 699 F.3d 246 (2d Cir. 2012), cert. denied, 134 S. Ct. 201 (2013).



imposing macroeconomic policies on sovereign borrowers in order to ensure that they are able to repay.

This article showed that surcharges do not serve to avoid taking credit from the IMF nor to speed repayments. However, if surcharges are a way to protect the IMF against potential risks on payments, then it logically cannot defend its preferred creditor status. This status has no legal basis in international law. If this is accepted in order to protect the IMF's ability to intercede in an economic crisis, then this institution cannot at the same time damage countries in crisis with this mechanism. Both are logically not compatible.

It is then not surprising that civil society organizations from all regions and—to a lesser extent—a few developing States (such as Argentina, Mexico, and South Africa) have been advocating, since the COVID-19 pandemic outbreak, that surcharges should be a) eliminated or, at least, b) reduced (Bretton Woods Project 2022). A central part of the arguments has been that such usurious surcharges policies are draining valuable fiscal resources from indebted countries and, with them, affecting the right to development.

There is a third option that could be considered in public debates in order to limit the pernicious effects of surcharges on the right to development. As it has been explained in the context of risk premiums (Pahnecke and Bohoslavsky 2021), surcharges need to be adjusted after the full principal payment, because it prevents discrimination by ensuring equal treatment of all sovereign debtors once they have paid the principal while making available resources to improve their living conditions. As with collaterals in financial contracts, surcharges (if not eliminated or reduced) must be returned once their purpose of securing the principal has been fulfilled, since the default risk no longer exists.

The Declaration on the Right to Development states that 'appropriate economic and social reforms should be carried out with a view to eradicating all social injustices' (art. 8). Possible measures to achieve this goal include public debt relief for developing countries and IFIs' policies that do not involve modelling the economies of debtor countries based on orthodox economic theories that foreseeably harm those same countries and increase levels of inequality and environmental degradation. A conception of sustainable development that—among other conditions—respects natural diversities while recognizing the leading position of indigenous communities in their contribution to environmental protection (IACHR 2015; 2019; 2021a, 2021b, 2021c) necessarily requires that international financial law does not legitimize usurious debt conditions that leave developing countries with no fiscal space to fully exercise the right to sustainable development.

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