The Lawfulness of Peacebuilding Interventions by International Financial Institutions Under International Law

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Abstract
Post-conflict peacebuilding is a multidimensional, highly complex and multifaceted undertaking that requires significant resources (financial, technical, human, etc.). With the proliferation of actors in this field, it’s in this context that peacebuilding interventions by international financial institutions in countries emerging from armed conflict are taking place. It’s therefore not surprising to see that international financial institutions linking are peace and development issues. Because it should be noted that “action in favour of development produces its best results only in times of peace.”

While the competence of international financial institutions in the economic field is a truism, their competence in peacebuilding is not reflected and deserves more appeal and questioning. Peacebuilding is therefore not expressly included in the constitutive documents of the international financial institutions. This is why it’s relevant to focus on the legality of peacebuilding interventions by international financial institutions whose intervention in fragile countries, including post-conflict countries, is very often criticized and can generate feelings of mistrust and enthusiasm... The international financial institutions in question include the World Bank, the International Monetary Fund and the Regional Development Banks. The main objective of the United Nations is the maintenance of international peace and security. Today, this objective has evolved to include peacebuilding after maintaining it. Thus, since the international financial institutions are specialized agencies of the United Nations, their peacebuilding interventions are, therefore, lawful because they are part of the United Nations system.

Keywords: lawfulness, peacebuilding interventions, international financial institutions, international law

Introduction
We can never say enough; one of the popular concepts in the current missions of the United Nations is that of peacebuilding. Like many other concepts used since the end of the Cold War, especially in United Nations peace operations, "peacebuilding" is now a well-established term. Its ambitions are great and its supporters are numerous. Peacebuilding is about defining and promoting the measures necessary to move towards more sustainable and peaceful relationships and governance structures in order to avoid a recurrence of conflict¹. Peacebuilding has four dimensions:

- socio-economic development;
- good governance;
- the reform of judicial and security institutions and
- the culture of justice, truth and reconciliation.

Indeed, peacebuilding is a complex and multifaceted undertaking. It requires a variety of actors and resources of various kinds. It is in this context that the interventions of international financial institutions in countries emerging from armed conflict in general and in the Democratic Republic of Congo, for example, are carried out. It is, therefore not surprising to see international financial institutions linking peace and

¹ A conflict is a dispute or incompatibility due to a real or perceived opposition of needs, values and interests. Politically, the term conflict is associated with wars or other struggles involving the use of force. Conflict" is used in this report to refer to violent conflict.
development issues. Because it should be noted that "action in favour of development produces its best results only in times of peace."

Thus, not being traditional peace actors, the progressive interventions of international financial institutions in the post-conflict context can generate feelings of distrust and enthusiasm. Are there any particular reasons for their involvement in peacebuilding? Thus, it can be seen that these reasons are due to several factors. These include, in particular, the changing nature of armed conflict and the need to ensure stability, the ongoing relationship between peace and development, the willingness to fulfill the initial objectives hampered by armed conflict and situations of fragility, and also the willingness of international financial institutions to respond to the increased and specific needs of their Member States emerging from conflict situations.

Peacebuilding interventions contain a number of promises, but also dangers, that must be carefully examined before blindly implementing the liberal premises that it values in conflict resolution and peacebuilding. What does the concept of peacebuilding mean? How does it differ from some other concepts? What is the theory and application of this concept? What criteria can be drawn from its analysis to enable it to be judged later on as applicable to specific missions?

In this study, the aim is to determine the tools for their intervention in peacebuilding. Many questions can be related to it. On the one hand, it may be a question of determining the type of tools they use or are using to support peacebuilding. Are they specific or traditional mechanisms, instruments or devices? And if so, what are the conditions of access and the legal framework for them? On the other hand, it is precisely a question of whether these mechanisms have evolved over time and whether they take more into account the changes that can take place in peacebuilding contexts. In addition, it is a question of whether there is a complementarity between the mechanisms.

I. Legal framework for the establishment of post-conflict peace-building operations under international law

While the competence of international financial institutions in the economic field is a truism, their competence in peacebuilding does not appear to deserve more appeal and questioning. Indeed,

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2 REVAH O., *Quelles chances de survie pour l'Etat post-conflict*, Paris, L'Harmattan, 2010, p.149. In the same vein, the AfDB also provides remarkable justification. It states: "The Bank Group's intervention in countries in conflict and post-conflict situations is in line with its mandate and overarching objective of poverty reduction. The AfDB's main mission is to promote the social and economic development of its regional member states by mobilizing secure and secure internal and external resources. War and conflict are incompatible with the long-term objectives of social and economic development. Under this mandate, it is the Bank Group's duty to engage in the search for solutions to the problems of countries in post-conflict situations. The Bank recognizes that poverty remains the underlying cause of conflicts and is exacerbated in the post-conflict stage. Its participation in the post-conflict situation will therefore be in line with the vision and will further contribute to the promotion and improvement of the Bank Group's and AfDB’s priority niches", *AfDB, Bank Group Principles of Action on Post-Conflict Assistance*, Tunis, AfDB, 2004, p. 11.

3 With regard to the changing nature of the conflict and the need to ensure stability, it should be noted that the end of the Cold War has given way in some countries to an exacerbation of internal tensions. Internal armed conflicts have replaced inter-state armed conflicts with serious harmful consequences (political, social and economic) undermining the ability of States to rebuild themselves. This situation has given rise to greater concern among various actors, including international economic organizations that are very strongly committed to economic development. Similarly, the relationship between peace and development can logically explain their interest in peace and its consolidation.

4 As for the concern of international economic organizations to meet their objectives and the increased and specific needs of their member countries emerging from a conflict situation, the World Bank is a real example. In the sense that it presents "its intervention in post-conflict situations as a means of achieving its objective of poverty reduction and development. It sees conflict as a major obstacle to development because of its negative impact on the physical, economic and social capital of the countries involved. Thus, post-conflict prevention and reconstruction are, according to her, part of the mission to fight poverty."


6 By financial or technical assistance mechanisms for peacbuilding, we mean a set of instruments (financial, technical, ...) implemented to support peacebuilding in States emerging from armed conflict. In the remainder of this analysis, the term "mechanism" will refer to both instruments and mechanisms dedicated to peacebuilding.

7 For example, those traditionally used by international financial institutions outside post-conflict situations.

8 Since its first implementation.
peacebuilding is not expressly mentioned in the constitutive documents of the international financial institutions. Similarly, the overall "humanitarian" perception of peacebuilding and the pursuit of economic interests that fundamentally drives international financial institutions may suggest, from the outset, that these entities are "usurpers" in this field or have no competence in this field or that their field of action is far from it.

Historically, the desire for peace on an international scale has been around for a long time and is part of the philosophy of pacifism. Thus, pacifism "is the will to avoid war," but this does not exclude "neither the possession of an armed force nor the use of war to defend legitimate interests." At another level, pacifism seeks to establish lasting peace and to refuse any recourse to war absolutely. As a result, there is a necessary link between the search for peace and public international law since the pursuit of universal and perpetual peace is guaranteed by a legal obligation, the violation of which is punishable.9

Exempting the legal basis for peace-building through the interventions of international financial institutions requires that the analysis of the peace-building framework established by the Charter of the United Nations (1.1.) be followed by that of the legal framework of the World Bank (1.2.) before examining the normative framework established by the International Monetary Fund (1.3.) and the African Development Bank (1.4.).

I.1 Legal basis for peace-building established by the Charter of the United Nations

Peacebuilding has become a guiding principle of international intervention in the periphery since the United Nations (UN) included it in its Agenda for Peace in 1992. With the objective of creating the conditions for an autonomous peace and avoiding the recurrence of armed conflict. Peacebuilding seeks to eradicate the root causes of violence. It is necessarily a multi-dimensional project involving political, legal, economic, social and cultural institutions and security measures, understood as complementary and mutually reinforcing.10 Post-conflict peace-building operations follow the same logic that underlies the practice of United Nations peace operations in general.11 They are, therefore, part of the same legal framework as all UN peace operations in that they can be based on both Chapter VI of the Charter and Chapter VII.

Indeed, the United Nations is inspired by the Covenant of the League of Nations by improving it in order to avoid making the same mistakes again, as was the case for the collective security system. Thus, the founding States of the United Nations have put forward three reasons for the failure of the League of Nations in the field of international peacekeeping and the implementation of collective security.

- First, they note that the Covenant did not contain any explicit obligation towards the Member States to participate in the repression of an act of aggression.
- Secondly, the organisation itself had no means of armed coercion to intervene against the wrongdoers in order to exert pressure.
- Finally, the unanimity rule then in force within the Council and the League of Nations itself was undoubtedly a brake on the taking of certain crucial decisions.

The UN's collective security branch now relies on the major powers and a range of measures, from the breakdown of certain trade relations to the use of armed force. And once collective security is functioning and peace is more or less well maintained, then serious consideration can be given to the implementation of peacebuilding operations.

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9 Peaceful ideology, since antiquity, has put forward, on the one hand, the uselessness of war or at least, it is the worst means to achieve its ends and, on the other hand, its horror with its destruction, death, mutilation... Thus, in the empires of Babylon and Egypt, "economic needs were defeated by the autarky and violent and forced each Empire into peaceful relationship with the external world". These new relations are based on treaties that respect the rules of pacta sunt servanda and diplomacy. Nguyen Quoc Dinh, P. Daillier and A. Pellet, Droit international public, Paris, LGDJ, 7th edition, 2002, p. 44.

10 This action takes several forms: demilitarization, structural reforms, police and judicial reforms, economic development, elections... This very broad approach was then adopted in 1995 to consider two types of peacebuilding: one that strengthens preventive diplomacy ("addressing the root causes of conflict") and one that strengthens restored peace ("institutionalizing peace").

Thus, any peacebuilding activity seeks to mobilize political, financial and technical resources to bring together factions in conflict around the objectives of a peace process. United Nations peacebuilding activities include the development or amendment of constitutions; the implementation of disarmament, demobilization and reintegration programmes; the delivery of humanitarian assistance to communities; support for transitional justice systems; the strengthening of public institutions and the provision of public services; the promotion of civil society organizations and independent media; civil and democratic oversight of the security sector; and the organization of elections. What about the World Bank?

I.2. Normative framework for peacebuilding interventions by the World Bank

In a post-conflict context and with a view to peacebuilding, the World Bank, like other actors, implements various mechanisms within its core area of competence. What exactly is the situation with the mechanisms established by the World Bank? Have there been any changes or evolution of these mechanisms? In addition to financial assistance, there is often talk of technical assistance, either to make better use of the financial resources allocated or simply to increase the chances of achieving certain defined objectives. In the context of the World Bank's intervention in peacebuilding, is there, or is there not an addition of technical assistance? For a better understanding of the articulation of the World Bank's intervention in peacebuilding, it is important to look at both the modalities of financial and technical assistance.

Following the debates within the World Bank on post-conflict management, the World Bank first set up in 1997 a structure initially called the "Post-conflict Reconstruction Unit (PRU)" will be renamed in 2001 as the "Conflict Prevention and Reconstruction Unit (CPRU)" and then merged in 2007 with the "Fragile State Unit" to give a new structure called "Fragile and Conflict-Affected Countries Group (OPCFC)." This new structure was responsible for leading the World Bank's action and coordinating intervention mechanisms in peacebuilding. In the end, it was able to set up grants, loans, or credit mechanisms dedicated to peacebuilding.

Another institutional innovation is the creation in 2011 in Nairobi of the World Centre on Conflict, Security and Development. It is on the recommendation of the World Bank's 2011 World Development Report, entitled "Conflicts, Security and Development," that this centre was created to take greater responsibility for fragility and conflict. For example, it is specified that by setting up this centre, the World Bank intends to strengthen partnerships on security and development in order to support adapted reforms that are integrated into post-conflict environments. In July 2014, a reorganization within the World Bank gave rise to the "Fragility, conflict, and Violence Group (FCV)," which replaces the World Centre for Conflict, Security and Development. It should also be noted that the World Bank's intervention in post-conflict situations is sometimes based on a diagnosis or assessment of the existing context (in the post-conflict country) using the "conflict sensitivity assessment" set up in 2001.

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12 The name of this entity reflects a much broader scope of action than post-conflict, including conflict prevention. In this regard, a certain distinction must be made between the prevention of the resurgences of conflicts, a situation in which action is always part of peacebuilding, and conflict prevention in the broad sense (envisaged even before the outbreak of a first conflict) which cannot be included in post-conflict peacebuilding.

13 The grant in terms of international financial assistance can be considered as the allocation of resources free of charge to an entity, in this case a post-conflict State. Unlike a grant, a loan involves the allocation of resources in return for a repayment obligation. A certain link may exist between loan and grant when reference is made to loans with a grant element, such as concessional loans. It is further stated that: "Concessional loans as opposed to commercial loans have a grant element that reflects the financial terms of a loan: interest rate, maturity (time to repayment) and grace period (time to first principal repayment). The element of quantity-donation the concessionality or preferentiality of a loan", COHEN D., JACQUET P. and REISEN H., "After Gleneagles: the place of loans in ODA", Paris, OECD, 2006, p. 8. Moreover, in a comparative way, grant and loan mechanisms are of a different legal nature and therefore have different consequences in the relationship with beneficiaries.

14 The term "credit" refers to loans granted on relatively more flexible terms than usual. For example, "IDA lends funds on concessional terms. This means that the IDA credit bears very little or no interest and repayment is spread over 25 to 40 years, including a 5 to 10 year grace period", http://www.worldbank.org/ida/what-is-ida-french.html.

15 See http://www.go.worldbank.org/YLRFDS6EQV0.

In addition, it should be noted that, in defining a strategy that takes into account the situation of certain post-conflict countries, the World Bank may use certain instruments such as the "Interim Strategy Note (INS)," which is different from the "Partnership Strategy (Country (SPC))" which it usually implements. Indeed, the interim strategy note allows the implementation of a programme adapted to particular situations such as transitional, post-crisis or post-conflict periods, and allows the World Bank to continue its relations with the country in question despite the difficulties involved. However, while at the World Bank level, the commitment to peacebuilding has resulted in the establishment of specific structures, financial assistance mechanisms, i.e., grant trust funds, have also been created for this purpose. It was after extensive discussions that specific structures and mechanisms, namely trust funds for peacebuilding, were established at the World Bank level. In addition to trust funds, the World Bank provides financial assistance for peacebuilding through other sources.

1.3 Normative framework for peacebuilding interventions by the International Monetary Fund

Like the World Bank, the IMF has developed a financial assistance mechanism for post-conflict peacebuilding situations. The same applies to technical assistance. The specific situation of post-conflict states was taken into account at the IMF level in 1995 through an extension of the scope of the financial assistance mechanism known as "Emergency Assistance," which made it possible to have "Post-Conflict Emergency Assistance (PCA)." The AUPC was "limited to cases where a member country in the urgent balance of payments need is unable to formulate and implement a comprehensive economic programme because its capacities have been damaged by the conflict, but nevertheless has sufficient capacity for economic policy planning and implementation."

Although the changes made by the IMF are not similar to those made by the World Bank, a mechanism was initially put in place for post-conflict situations on the basis of the "general authorization" enshrined in its Articles of Agreement. In order to adapt to the needs of Member States, a change occurred in 2011 in this mechanism, which encouraged the use of other financial assistance mechanisms.

In addition, the eligible country should make efforts to overcome balance of payments difficulties, and should also be able to strengthen institutional and administrative capacity as a matter of priority to pave the way for an upper credit tranche agreement or an agreement under the Poverty Reduction and Growth Trust Fund (PRC). In practice, AUPC resulted in the provision of a loan with some flexibility. There was even the possibility that only low-income countries receiving emergency assistance in post-conflict situations

17 "The Country Partnership Strategy is the most important of the documents devoted by the World Bank to a given country. It is tailored to the country's needs and context and sets out the development priorities identified by the World Bank Group, as well as the level and type of assistance it intends to provide over a four-year period. The partnership strategy is therefore the real roadmap for the World Bank's intervention in a given country over a specific period of time". www.worldbank.org/fr.

18 In this regard, it is mentioned in particular that: «Although Board members concede that speed and flexibility are crucial for post-conflict operations, they disagree on how financing can best allow for speed and flexibility. Financing was by far the most contentious issues during meetings on the Framework paper, and several times it was left to be decided later. Some supported the establishment of a post-conflict trust or Development Grant Facility for use by countries where traditional lending was not immediately available. This would avoid the time loss incurred by doing it case-by-case and could attract additional resources. Others opposed the trust fund idea and raised concerns that supply would create demand and raise expectations that the Bank could not meet. Some argued that the Bank's strength lies in the rigor of its approach, based on ensuring that funds are used to the best advantage; if it was decided that grants were more appropriate than loans or credits, then the Bank may not be the right institution for these activities. In support of this view, it was suggested that if existing lending vehicles were not adequate, then new instruments could be created by extraordinary assistance for post-conflict activities ». KREMIER A., ERICKSSON J., MUSCAT R. ? ARNOLD M. and SCOTT C., "The World Bank’s Experience with Post-Conflict Reconstruction", Washington D C, World Bank, 1998, p. 8.

19 See IMF, Annual Report 2011, Washington D C, IMF, 2011, p. 22. In the details of the conditions, it should be known that, as far as the access limit is concerned, it was set at twenty-five per cent of the quota, with the possibility of obtaining up to an additional twenty-five per cent on an exceptional basis. In line with the access limit, a change was made in 2004 to extend the duration of assistance to post-conflict countries to three years, with the possibility that the amount of such assistance could reach fifty per cent of the quota, but within a limit of twenty-five per cent per year. As for the commission, it was the base rate that was applied without setting additional commissions. There was no specific phasing and monitoring planned. See IMF, " IMF Emergency Assistance: Supporting Reconstruction Following Natural Disasters or Armed Conflict", op. cit.

20 For example, "emergency loans are generally disbursed quickly and are not subject to performance criteria. When a member country requests emergency assistance, it is required to indicate the broad outlines of the economic policy corrective measures it proposes to implement", IMF, " IMF Emergency Assistance: Supporting Reconstruction Following Natural Disasters or Armed Conflict", op. cit.
could benefit from an increase in the commission rate if funding was available\textsuperscript{21}. On the other hand, the amounts lent were much less important in relation to the needs of the countries and most of the time they were conditioned\textsuperscript{22}.

With a view to providing even more appropriate assistance, in 2001, the IMF introduced the possibility for post-conflict countries eligible for its concessional lending facilities\textsuperscript{23} to benefit from a subsidised interest rate\textsuperscript{24}. But a review of the IMF's intervention was carried out and changes were made. In fact, on February 1, 2014, the bonus account administered for the AUPC (the one set up in 2011) was closed\textsuperscript{25}. In summary, AUPC's benefit was conditional on a combination of post-conflict and balance of payments difficulties. Although it has been allocated to more than 15 countries since its establishment\textsuperscript{26}, AUPC as a mechanism has been redesigned, making other financial assistance mechanisms more relevant to the situation of post-conflict peacebuilding countries. The broad scope of IMF financial assistance is reflected in the fact that its assistance mechanisms are in principle open to all its members that meet well-defined criteria and sometimes even beyond.

I.4. Normative framework for peacebuilding interventions by the African Development Bank

The AfDB is an essential part of Africa's development architecture. The Bank is appreciated for its African character, its deep knowledge of African development problems and its close relations with its regional member countries. Its partnerships with the African Union and RECs are also key assets. African countries have confidence in the Bank and would welcome seeing it play a more active role in addressing issues of conflict and fragility. The Bank is already involved in many areas of development assistance that are essential for managing conflict drivers and building resilience. It is the first investor in infrastructure on a continental scale. Its investments in regional transport corridors help landlocked countries to become "open countries through land links," promoting regional economic integration; in addition, its efforts to promote access to transport, electricity and water in remote areas help to address regional inequalities.

The Bank was among the first institutions to provide budget support to post-conflict countries, and its Fragile States Facility helps countries in transition clear their arrears with international financial institutions and access development finance. She specializes in building basic economic management capacity, including public financial management, natural resource management and business climate improvement. It supports the restoration of essential services such as health and education, as well as the design of social safety nets, while its private sector subsidiary supports strategic investments and public-private partnerships.

\textsuperscript{23} These are loans whose terms, including interest rate and maturity, are more favourable to the borrower than those of the market. Similarly, "The degree of concessionality of a loan is measured by its "grant element". The grant element is the difference between the nominal value of the loan and the sum of the present value of future debt service payments to be made by the borrower, expressed as a percentage of the nominal value (...) If the interest rate of the credit is lower than the discount rate, the current value of the debt is less than its nominal value and the difference is the grant element (positive) of the loan", IMF, "Concessionality and definition of debt limits for IMF-supported programs in low-income countries", IMF, (updated December 2010), http://www.imf.org/Externaenglish/np/pdr/conc.
\textsuperscript{24} For example, "... the reform of the IMF's concessional lending mechanism reduces the subsidised rate to 0% until the end of January 2012 and to 0.25% thereafter, on all outstanding loans granted as part of emergency assistance following natural disasters or post-conflict to countries eligible for the CPP (Poverty Reduction and Growth Trust Fund)", see IMF, "IMF Emergency Assistance: Supporting Reconstruction Following Natural Disasters or Armed Conflict", op. cit.
\textsuperscript{25} In this regard, it is stated that: "A reform of the IMF's arrangements for those eligible for CPP Trust Fund assistance, which came into effect in January 2010, introduced the Fast Credit Facility (FCF). The latter provides concessional financial assistance to low-income countries facing an immediate balance of payments problem and has therefore replaced the use of emergency assistance at a subsidised rate, financed from the general resources account. In accordance with the provisions of the AUPC/AUCN (Emergency Assistance for Natural Disasters) Subsidy Account Facility, the process of closing the account began at the end of 2013, after low-income countries repaid the last outstanding AUPC/AUCN credit earlier in the year," IMF, Annual Report 2014: From Stabilization to Sustainable Growth, op. cit. See also IMF, \textit{The Fund's Engagement in Fragile States and Post-Conflict Countries: A Review of Experience Issues and Options}, Washington D C, IMF, 2008, 61p.
\textsuperscript{26} For example: Bosnia and Herzegovina (in 1995 for an amount of 45 million US dollars), Rwanda (in 1997 for an amount of 12.2 and 8.1 million US dollars), etc. See IMF, "IMF Emergency Assistance: Supporting Reconstruction Following Natural Disasters or Armed Conflict," op. cit.
Since 2004 and on a regular basis, the AfDB has adapted its assistance to support its regional member countries emerging from conflict and engaged in peacebuilding (generally, AfDB support is reserved for its regional members, the 54 African countries). As a result, various mechanisms and strategies have been implemented. Between 2004 and 2014, in terms of mechanisms, the AfDB moved from the Post-Conflict Countries Facility (PCCF) to the Fragile States Facility (FSF). In 2014, further changes occurred in the AfDB’s approach.

The normative framework governing the maintenance of peace and security, conflict prevention, management and resolution in Africa\(^{27}\), remains largely perfectible because, suffering from a number of ambiguities, confusion and vagueness\(^{28}\). It is true that texts that are too precise are difficult to resist wear and tear and the challenge of time, no longer corresponding to the circumstances that gave rise to them. As we know, it is the short and ambiguous texts which, in written law, have longevity and vitality because they lend themselves to enrichment and adaptation through practice, another way of saying that practice is fruitful where the texts are destined to a kind of legal entropy. However, the ambiguity or brevity of the texts can be detrimental to them, making their optimal application problematic. This reality is no stranger to the normative conflict resolution instruments of the African Union, the Regional Economic Communities and the AfDB.

II. Legal issues of peacebuilding interventions by international financial institutions

Clearly, peacebuilding is a very complex and multi-faceted undertaking. A delicate task, but just as expensive and very expensive\(^{29}\). It requires a variety of actors and resources of various kinds. It is in this context that the interventions of international financial institutions in post-conflict countries are taking place. Indeed, it can be seen that three of them are keen to motivate this study. These include, in particular, the changing nature of armed conflict and the need to ensure stability\(^{30}\), the ongoing relationship between peace and development, the willingness to fulfill the initial objectives hampered by armed conflict\(^{31}\) and situations of fragility\(^{32}\), and also the willingness of international financial institutions to respond to the increased and specific needs of their member countries emerging from conflict situations.

That said, it is important to analyse the problem of the legality of the intervention of international financial institutions in peacebuilding. Two aspects will be the main focus around the legality of their intervention. First and foremost, it is the legal basis for their competence in peacebuilding\(^{33}\). Secondly, the issue of

\(^{27}\) The African continent is subdivided into five sub-regions: North Africa (6 countries: Algeria, Egypt, Libya, Mauritania, Sahrawi Arab Democratic Republic, Tunisia); West Africa (15 countries: Benin, Burkina Faso, Cape Verde, Côte d'Ivoire, Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone, Togo); Central Africa (10 countries : Burundi, Cameroon, Central African Republic, Chad, Congo, Democratic Republic of the Congo, Equatorial Guinea, Gabon, Rwanda, Sao Tome and Principe); East Africa (12 countries : Comoros, Djibouti, Eritrea, Ethiopia, Kenya, Madagascar, Mauritius, Seychelles, Somalia, Sudan, South Sudan, Tanzania, Uganda; Southern Africa (10 countries: Angola, Botswana, Lesotho, Malawi, Mozambique, Namibia, South Africa, Swaziland, Zambia, Zimbabwe).

\(^{28}\) P. Okioh, Le droit de la sécurité collective devant l'Union africaine, op. cit.


\(^{30}\) With regard to the changing nature of conflicts and the need to ensure stability, it should be noted that the end of the Cold War has given way in some countries to an exacerbation of internal tensions. Internal armed conflicts have supplanted inter-state armed conflicts with serious damaging consequences undermining the ability of States to rebuild themselves. This situation has been of greater concern to various actors, including international financial institutions that are very strongly committed to economic development.

\(^{31}\) As for the concern of international financial institutions to meet their objectives and the increased and specific needs of their member countries emerging from a conflict situation, the World Bank is another example. Indeed, it presents its intervention in post-conflict situations as a means of achieving its objective of poverty reduction and development. The World Bank sees conflict as a major obstacle to development because of its negative impact on the physical, economic and social capital of the countries involved. Thus, post-conflict prevention and reconstruction are part of its mission to fight poverty. REVAH O., Quelles chances de survie pour l'Etat post-conflict, Paris, L'harmattan, 2010, p.149. See also AfDB, Principe d'action du groupe de la Banque en matière d'assistance post-conflict, Tunis, AfDB, 2004, p.11.

\(^{32}\) About 70% of fragile states have been affected by conflict since 1989 and more than 1.5 billion people live in fragile states or in conflict. See http://www.newdeal4peace.org/wp-content/uploads/2013/01/new-deal-pour-dans-les-etats-fragiles-fr.pdf.

\(^{33}\) Indeed, jurisdiction is the essential element that governs the intervention of international financial institutions, which remain subjects derived from public international law.
II.1 The question of the legal basis for the competence of IFIs in peacebuilding interventions

The notion of competence is understood in a broad sense as the field of action that an authority can legally have. It is of a particular nature in the case of international financial institutions insofar as they are subjects created by States for a specific purpose. The extent of the competence of international financial institutions must, therefore, correspond to the will of the States that have established them. Fundamentally, the competence of an international organization in a specific field results from a specific attribution made in the constituent instrument, which is in a way its "birth certificate." It is in this sense that the principle of specialization of international organizations is stated. In addition to this principle, other elements also govern the competence of international organizations. This is the case with the theory of competences, which is sometimes renamed implicit power theory. The fact that international organizations are granted implicit powers or competences not provided for in their constitutive acts does not, however, call into question the principle of specialization. In addition, subsequent practice and ad hoc agreements are also mentioned as principles governing the competence of international organizations. Moreover, competence is a function of the "rules of the organization." Moreover, the question of the competence of international financial institutions over its peacebuilding interventions has often been the subject of numerous disputes in different circles. It is, therefore, essential to consider whether international financial institutions have competence in peacebuilding in the light of the different rules governing the competence of international organizations. This issue is all the more important since an intervention in peacebuilding outside any legal framework can ultimately undermine this objective and lead to a more damaging situation. In addition, the concomitant resolutions of the General Assembly and the United Nations Security Council that established the Peacebuilding Commission provided for the participation of the various international financial institutions in the activities of the Commission, while conditioning it.

34 In its most widespread sense, competence refers to what an authority or the body on which it is conferred can legally do, and practically coincides with its capacity to act: applied to normative activity, competence is nothing more than the legal power to make legal acts, or, as it is most accurately said, without always avoiding slippage and assimilation from one term to another, "legal capacity" to perform acts, CAHIN G., "The notion of discretionary power applied to international organizations", RGDIR 2003/3, pp. 340.

35 Competence and power, even if they are interdependent, should therefore not be confused in any way. CONSTANTINESCO V., Compétence et pouvoir dans les Communautés européennes: contribution à l'étude de la nature juridique des communautés, Paris, LGDJ, 1974, p. 83.

36 The ICJ recalled and clarified what the principle of specialization for international organizations means in its advisory opinion on the legality of the use of nuclear weapons by a State in armed conflict. She stated: "It hardly needs to recall that international organizations are subjects of international law which do not enjoy, like States, general competences. International organizations are governed by the principle of speciality, i.e. they are endowed by the States that create, with powers of attribution whose limits depend on the common interests that they have given them the task of promoting. ICJ, "Legality of the Use of Nuclear Weapons by a State in Armed Conflict", Advisory Opinion,[1996] ECR 25, para. 25, p. 78.

37 Implicit powers can be understood as all those which, not provided for verbatim by the creator of the service, are at each period of the organization's life, recognized and accepted by the Member States as accessory and subordinate means of achieving, in that period, the permanent purposes for which the organization was founded, CHAUMONT C., "La signification du principe de spécialité dans les organisations internationales", Mélanges offert à Henri Rolin, Problèmes de droit des gens, Paris, Pedone, 1964, p. 59. In the doctrine there are many definitions and they share a strong similarity. KOLB R., "Du domaine réseve: Réflexions sur la théorie de la compétence nationale", RGDIR, 2006, pp. 620-622. CPJJ, "Comptences of the ILO", Advisory Opinion of 23 July 1926, Series B No. 13, p. 18; ICJ, "Comptence of the European Danube Commission", Advisory Opinion No. 14 of 8 December 1927, p. 64; ICJ, "Compensation for damage suffered in the service of the United Nations", Advisory Opinion of 20 July 1962, Reports, 1962, pp. 158-170. This is because the theory of implicit competences is not an authorization for "all-out" interpretation. In other words, it does not give rise to the granting of any competence to an international organization unrelated to the competences attributed in the constituent instrument.


40 Academics; traditional peace actors, beneficiaries of peace operations, etc.

The reference to the relevant provisions of these international financial institutions as a key element of their participation highlights their importance in establishing a field of competence. It is in this very context that the question of the legality of the intervention of the various international financial institutions in peacebuilding arises first and foremost.

Secondly, it may be necessary to know the reasons for the initial absence and subsequent aggregation of peacebuilding expertise. Similarly, the question may concern the extension of the scope of competence of international financial institutions to peacebuilding. Has there been any replication of models between international financial institutions with regard to competence in peacebuilding? It is also relevant to determine whether it is an operational competence or normative competence. These are all questions that not only provide a better understanding of the competence of international financial institutions in peacebuilding but also provide answers to existing challenges. In any case, the involvement of international financial institutions in peacebuilding is a reality and is reflected on the ground in the conduct of various activities. However, it should be noted that it is in a progressive way that they have been led to take an interest in it, to make it appear or to include it in their field of competence. Thus, the competence of some international financial institutions in peacebuilding is based on their constitutive acts, while for others, it has been enshrined in a new treaty instrument.

II.2 The issue of State consent and the solicitation of peacebuilding interventions by International Financial Institutions

In the previous point, various elements have shown that the competence of international financial institutions in peacebuilding is established. However, not everything is resolved with the establishment of such competence. Indeed, for a peacebuilding intervention, an international financial institution, although having competence, must, in any case, comply with the rules and principles governing international relations.

In the aftermath of armed conflict, the State that has been at the heart of the conflict generally finds itself in a very difficult situation with enormous challenges for peacebuilding. Notwithstanding this situation, the sovereignty of the post-conflict State, as well as the aspirations of its people, cannot be relayed to a "second-level" in a peacebuilding intervention. This essentially raises the issue of consent to the intervention of international financial institutions for peacebuilding. Indeed, what are the rules governing the consent of the post-conflict State in this matter? What is the extent of the freedom of this consent? Is there really any room for maneuver when dealing with actors such as international financial institutions? What is the framework for this consent in the presence or absence of representative national authorities?

What are the rules for requesting assistance in the presence or assistance of national authorities?

43 Idem, p. 673.
44 The term shows that post-conflict peacebuilding requires much more than purely diplomatic or military decisions, and that a coherent peacebuilding effort is needed to eliminate the multiple causes of conflict or the risk of conflict. Peace-building may then include the establishment and strengthening of national institutions, election monitoring, human rights advocacy, the organization of reintegration and rehabilitation programmes and the pursuit of conditions for the resumption of development, Official Documents of the United Nations, General Assembly, Security Council, The Causes of Conflict and the Promotion of Peace and Sustainable Development in Africa, A/52/871 - S/1998/318, 13 April 1998, para. 63, p. 14.
45 In the presentation of some conceptions of peacebuilding (rigid, staged, synergistic, lax) Professor David and J. Toureille make a case for addressing the issue of consent according to the conception at hand. They note that: For both "rigorists" and "stappers", the consent of the parties to the conflict appears necessary for the success of a peacebuilding mission as well as for the security of the participants. For "synergists" as well as "laxists", since peacebuilding is not considered as the last phase of peace operations, a mission deployed on its behalf can do without the consent of the parties, DAVID P. C. & TOURNEILLE J., "La consolidation de la paix, un concept à consolider", in CONOIR Y. VERNAN G., (dir.) Making peace. Concepts and Practices of Peacebuilding, Québec, PUL, 2005, p. 20.
46 In peacekeeping, even if the State is not mentioned, the consent of all parties concerned is decisive and constitutes one of the fundamental principles of peacekeeping. Indeed, as stated, "peacekeeping can only take place with the agreement of the parties to the conflict. This agreement guarantees the mission the political and physical freedom and protection it needs to effectively carry out its mandate. In the absence of such an agreement, the security of peacekeeping forces may be compromised to the extent that the peacekeeping mission risks becoming a party to the conflict rather than the arbiter of the peace agreement, UN, Handbook on Civil Affairs, New York, UN, 2012, p. 18.

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These are all questions that require answers and can provide clarification in the analysis of the international financial institutions' intervention in peacebuilding. This is all the more important since compliance with established rules and, more broadly, with international law is essential to the acquisition of greater legitimacy in peacebuilding intervention. However, in this study, consent refers to the agreement of will between a post-conflict State and an international financial institution. The solicitation, on the other hand, refers to the request made by the post-conflict State for the intervention of an international financial institution.

In a post-conflict context, the determination of representative national authorities, i.e., those representing the post-conflict state, is not always obvious. Indeed, a given authority may not have control over the entire territory and may only be confined to certain portions. Some institutions, such as the World Bank, use the term "government in power" instead. In this analysis, representative national authorities are therefore local and non-foreign authorities exercising power in a post-conflict State and recognized by the international community. When discussing the intervention of international financial institutions in peacebuilding, it is important to know the margin of maneuver of representative authorities, particularly with regard to consent and solicitation. While it is in principle up to these representative national authorities to express consent to the peacebuilding intervention of international financial institutions, there may also be rules governing the framework within which assistance can be provided.

**Conclusion**

Peacebuilding is, therefore not immutable and static. Despite the complexity of the challenges, it must be improved in order to correct shortcomings, to respond to the changing and specific needs of post-conflict contexts and to prevent a return to the spiral of conflict. Thus, key actors such as international financial institutions must "redouble their efforts," i.e., they must provide a higher level of assistance to optimize their intervention in peacebuilding. What can be improved or corrected? Is the problem with the intervention method or intervention tool? Different entities such as the United Nations, specialized agencies, other international organizations, NGOs, civil society and many others have sometimes identified opportunities to optimize interventions in support of peacebuilding based on their practices and experiences in post-conflict countries.

With regard specifically to the international financial institutions, many reflections have been carried out and proposals have been regularly made on how to improve their involvement in peacebuilding. The work towards the 10-year review of the United Nations peacebuilding architecture in 2015 and the establishment of an independent High-Level Panel on Peace Operations will likely provide an opportunity to consider and address directly or indirectly the optimization of the involvement of international financial institutions in peacebuilding. Without claiming to be totally exhaustive in terms of possible solutions and areas of progress, the aim is to identify or identify the main prospects in post-conflict contexts.

Indeed, in a post-conflict country, progress can be made in one of the dimensions of peacebuilding for a few years and then a significant decline can be observed in that dimension, and progress can again be

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47 For a time, in Libya, there was clearly the exercise of power by two entities. On the one hand, the "Tobruk government" in the east of the country recognized by the international community and, on the other hand, the "Tripoli government" in the west of the country, not recognized by the international community but which effectively exercises authority over the part of the territory it controls.

48 Peacebuilding is an area that is constantly adapting to change and constantly seeking creative solutions. This is one of the opportunities to be explored in the practice of peacebuilding mentioned in the "White Paper on Consolidation". See GENEVA PEACEBUILDING PLATFORM, Le livre blanc de la consolidation de la paix, Geneva, Geneva peacebuilding platform, 2015, p. 4.


51 The report was submitted to the Secretary General of the United Nations on 15 June 2015.

52 Security, political, socio-economic, etc.
observed\textsuperscript{53}. Thus, like all actors, the intervention of international financial institutions must take into account these different character traits of peacebuilding. Clearly, their intervention can only be beneficial for peacebuilding if it has an impact in post-conflict States.

In this regard, various questions can be formulated. This may include determining the impact of the intervention of international financial institutions on peacebuilding. Is there a consistent impact of the assistance arrangements of international financial institutions on peacebuilding? What are the reasons or factors that can lead to a given impact, or that influence the balance sheet of international financial institutions, that significantly mitigate the causes of the resurgence of conflict? Finally, is there a need to optimize the involvement of international financial institutions in peacebuilding, and how?

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\textsuperscript{53} For example, Guinea-Bissau, which has been on the agenda of the United Nations Peacebuilding Commission since 2007, experienced this fluctuating situation of political stability between 2007 and 2001. The holding of free and fair parliamentary and presidential elections over the period 2008-2009 had been described by the United Nations Peacebuilding Commission in one of its reports as progress because of their success. This progress was impeded in April 2012 by a military coup of state.

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