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Mbengue, Makane Moïse; De Moerloose, Stéphanie

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Makane Moïse Mbengue and Stéphanie de Moerloose*

Multilateral Development Banks and Sustainable Development: On Emulation, Fragmentation and a Common Law of Sustainable Development

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Abstract: Multilateral Development Banks (hereinafter MDBs) have evolved from avoiding non-economic considerations, as required in most of their charters, to officially supporting sustainable development. This transformation is due not only to international law, civil society pressure or internal adjustments, but in part to the emulation phenomenon between the international effort for sustainable development made by international conferences and commissions and the sustainable development effort by MDBs. The paper first examines this emulation phenomenon and its strong impact on MDB creation of substantive instruments – the environmental and social safeguards – and of procedural instruments – the accountability mechanisms – for the integration of sustainable development. Following this discussion, the second part points out that MDBs' environmental and social safeguards still differ substantially, revealing a fragmentation in MDBs' normative understanding of sustainable development. After presenting the arguments supporting this fragmentation, the last part of the paper argues in favor of the harmonization of MDBs' environmental and social safeguards, resulting in the creation of a common law of sustainable development, the promotion of international law and the facilitation of investments.

Keywords: Multilateral Development Banks, sustainable development, social and environmental safeguards, accountability mechanisms, conditionality, fragmentation, harmonization

***Corresponding author: Stéphanie de Moerloose**, Institute for Environmental Sciences, University of Geneva, Geneva, Switzerland; University Austral, Buenos Aires, Argentina, E-mail: s.demoerloose@nyu.edu

Makane Moïse Mbengue, Faculty of Law and Institute for Environmental Sciences, University of Geneva, Geneva, Switzerland; School of Law, Sciences Po, Paris, France, E-mail: mmbengue@unige.ch

1 Introduction

The outcome document of Rio + 20 in 2012,¹ the Addis Ababa Action Agenda of July 2015² and the Sustainable Development Goals (SDGs) adopted in September 2015³ demonstrate a growing global commitment to sustainable development. International instruments⁴ regularly mention the importance of Multilateral Development Banks (hereinafter MDBs)⁵ for the implementation of sustainable development. While sustainable development is not included in most MDBs' charters, which even bar them from considering non-economic aspects,⁶ MDBs

¹ United Nations Conference on Sustainable Development, *The Future We Want, Report of the United Nations Conference on Sustainable Development*, UN Doc. A/CONF.216/16 (Rio de Janeiro, 2012).

² Third International Conference on Financing for Development, *Addis Ababa Action Agenda*, UN Doc. A/RES/69/313 (27 July 2015).

³ United Nations, *Transforming our world: The 2030 Agenda for Sustainable Development*, A/RES/70/1 (25 September 2015).

⁴ For instance, United Nations, *Institutional arrangements to follow up the United Nations Conference on Environment and Development*, A/RES/47/191 (22 December 1992), para. 23; United Nations Conference on Sustainable Development (2012), *supra* note 1, para. 54.

⁵ The term "MDBs" includes three institutions of the World Bank Group (the International Bank for Reconstruction and Development – hereinafter, IBRD – the International Development Association – hereinafter IDA – both hereinafter collectively referred to as the "World Bank," and the International Finance Corporation (hereinafter, IFC) and four Regional Development Banks (the Asian Development Bank – hereinafter ADB – the African Development Bank – hereinafter AfDB – the European Bank for Reconstruction and Development – hereinafter EBRD – and the Inter-American Development Bank – hereinafter, IADB).

⁶ IBRD, "Articles of Agreement", as amended effective 27 June 2012, Art. 4.X, available at: <http://siteresources.worldbank.org/BODINT/Resources/278,027-1,215,526,322,295/IBRDArticlesOfAgreement_English.pdf>, accessed 1 April 2016; IDA, "IDA Articles of Agreement", Art. V, Section 6, available at: <<https://www.worldbank.org/ida/articles-agreement/IDA-articles-of-agreement.pdf>>, accessed 15 May 2016; IFC, "Articles of Agreement", as amended through 27 June 2012, Art. 3.IX, available at: <http://www.ifc.org/wps/wcm/connect/CORP_EXT_Content/IFC_External_Corporate_Site/About+IFC_New/IFC+Governance/Articles>, accessed 1 April 2016; AfDB, "Agreement Establishing the African Development Bank", signed on 4 August 1963, Art. 38.II, available at: <<http://www.afdb.org/fileadmin/uploads/afdb/Documents/Legal-Documents/Agreement%20Establishing%20the%20ADB%20final%202011.pdf>>, accessed 1 April 2016; ADB, "Agreement Establishing the Asian Development Bank", Art. 36.II, available at: <<http://www.adb.org/sites/default/files/institutional-document/32120/charter.pdf>>, accessed 16 May 2016; IADB, "Agreement Establishing the Inter-American Development Bank", as amended through 31 July 1995, Art. 8.V(f), available at: <<http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=781584>>, accessed 1 April 2016.

have come to gradually embrace sustainable development. Sustainable development is now a principle,⁷ whether normative or directing, which regulates the actions of MDBs.⁸ This transformation⁹ is due not only to international law, civil society pressure or internal adjustments,¹⁰ but also to an emulation phenomenon between the international effort made by international conferences and commissions and the development effort made by MDBs. The international effort as studied here consists of the work of international conferences and commissions, specifically: the 1972 United Nations Conference on the Human Environment in Stockholm (hereinafter the Stockholm Conference); the World Commission on Environment and

7 P. Sands, J. Peel, A. Fabra and R. Mackenzie, *Principles of International Environmental Law* (3rd ed., Cambridge: Cambridge University Press, 2012), p. 207. The International Court of Justice has labeled sustainable development a “concept” in the *Gabčíkovo-Nagymaros* case (*Gabčíkovo-Nagymaros Project (Hungary v. Slovakia)*, *Judgement*, ICJ Rep. (1997), 7, para. 140), an “objective” in the *Pulp Mills* case (*Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, *Judgment*, ICJ Rep. (2010), 14, para. 177), while, in the *Iron Rhine* case, the arbitral tribunal has deemed the duty to prevent and to mitigate environmental harm a “principle of general international law” (*Award in the Arbitration regarding the Iron Rhine (‘Ijzeren Rijn’) Railway between the Kingdom of Belgium and the Kingdom of the Netherlands*, 27 RIAA (2005) 35, para. 59).

8 On the evolution of MDB mandates until 1997, concluding that MDBs have an international legal obligation to take sustainable development concerns into account, see G. Handl, *The Legal Mandate of Multilateral Development Banks as Agents for Change Toward Sustainable Development*, 92 *The American Journal of International Law*, no. 4 (October 1998), 642–665.

9 On the move past the “old consensus” to “emerging views of development” for MDBs, see D. Bradlow, *Southern African governments, multilateral development banks, non-state actors, and sustainable infrastructure: Managing changing relationships*, 22 *South African Journal of International Affairs*, no. 3 (2015), 289–305.

10 Although they exceed the scope of this paper, the pressure of environmental NGOs and Donor States as well as institutional changes triggered by MDB staff are important factors for the integration of sustainable development in MDBs. See for instance S.J. Macekura, *Of Limits and Growth: The Rise of Global Sustainable Development in the Twentieth Century* (New York: Cambridge University Press, 2015), pp. 173–175, 198, 201–218, S. Park, *Norm Diffusion within International Organizations: A Case Study of the World Bank*, 8 *Journal of International Relations and Development*, no. 2 (2005), 122–134, I.F.I. Shihata, *The World Bank and the Environment: A Legal Perspective*, 16 *Maryland Journal of International Law*, no. 1 (1992), 1–8, R. Wade, “Greening the Bank: The Struggle over the Environment, 1970–1995”, in D. Kapur, J.P. Lewis and R. Webb (eds.), *The World Bank: Its First Half Century, Volume 2: Perspectives* (Washington D.C.: Brookings Institution Press, 1997). For a detailed history of the Social Development Network in the World Bank, see G. Davies, *A History of the Social Development Network in The World Bank, 1973–2002*, *Social Development Papers*, no. 56 (March 2004).

Development of the 1980s; the 1992 United Nations Conference on Environment and Development in Rio (hereinafter the Rio Conference); the 2002 Johannesburg World Summit on Sustainable Development (hereinafter the Johannesburg Summit); the 2012 United Nations Conference on Sustainable Development in Rio (hereinafter the Rio + 20 Conference); as well as, in 2015, the Third International Conference on Financing for Development in Addis Ababa, the United Nations Sustainable Development Summit in New York and the United Nations Climate Change Conference in Paris. By emulation phenomenon, what is meant is a multidirectional endeavor between MDBs and this international effort for sustainable development to match or surpass each other.¹¹ As examined in the first part of the paper, this emulation phenomenon has had a strong influence on MDBs' creation of substantive instruments – the environmental and social safeguards – and of procedural instruments – the accountability mechanisms – for the integration of sustainable development.¹²

The second part of the paper observes that although there is a regulatory convergence toward a general definition of sustainable development, many policy areas are specified differently, while many others are simply not part of MDBs' common definition of sustainable development. There is no common law¹³ of sustainable development yet. The paper will show how harmonization of environmental and social safeguards is criticized from three different angles: some contend that harmonization may trigger a race to the top, some argue paradoxically that it may prompt a race to the bottom, and finally some argue that harmonization is a “one-size-fits-all” approach with major operational difficulties. Finally, taking the opposite stance to these criticisms, the paper will argue in favor of the harmonization of MDB social and environmental safeguards, asserting that a race-to-the-top is in fact desirable, promoting compliance with international soft and hard law, creating a common law of sustainable development, while reducing costs, increasing predictability and facilitating investments.

¹¹ The paper retakes and expands the concept of emulation phenomenon between MDBs analyzed in L. Boisson de Chazournes, “Partnerships, Emulation, and Coordination: Towards the Emergence of a *Droit Commun* in the Field of Development Finance”, in H. Cissé, D. Bradlow and B. Kingsbury (eds.), *The World Bank Legal Review, Vol. 3: International Financial Institutions and Global Legal Governance* (Washington: World Bank, 2011), pp. 173–174.

¹² S. de Moerloose, *Estándares ambientales y sociales en la condicionalidad del Banco Mundial*, 3 *Revista de Derecho Ambiental de la Universidad de Palermo*, no. 2 (November 2014), 45–88.

¹³ See Boisson De Chazournes (2011), *supra* note 11.

2 MDBs' integration of the principle of sustainable development

2.1 Sustainable development and integration

The most commonly cited definition of sustainable development was expressed in the Brundtland Report, as “development that meets the needs of the present without compromising the ability of future generations to meet their own needs.”¹⁴ The aspirational, abstract and variable nature of this definition has left room for different interpretations and, consequently, for debate.¹⁵ Nonetheless, it is generally understood that sustainable development is composed of an economic, a social and an environmental pillar,¹⁶ and that it entails at least the following principles: the sustainable use of natural resources and equity between generations, or intergenerational equity; the equitable use and distribution of the outcomes of development within one generation, or intragenerational equity; as well as the integration of environmental protection in the development process.¹⁷

The United Nations General Assembly had declared in 1997 that “development is a multidimensional undertaking to achieve a higher quality of life for all people. Economic development, social development and environmental protection are interdependent and mutually reinforcing components of sustainable development.”¹⁸ The principle of integration was also endorsed by the international community in Principle 4 of the 1992 Rio Declaration on Environment and Development (hereinafter the Rio Declaration), stating that “[i]n order to achieve

¹⁴ G.H. Brundtland et al., *Our Common Future: The Report of the World Commission on Environment and Development* (Oxford: Oxford University Press, 1987); see on that matter for instance Sands et al. (2012), *supra* note 7, pp. 206–217.

¹⁵ See in general V. Barral, *Sustainable Development in International Law: Nature and Operation of an Evolutive Legal Norm*, 23 *The European Journal of International Law*, no. 2 (2012), 377–400. G. Fievet, *Réflexions sur le concept de développement durable: Prétention économique, principes stratégiques et protection des droits fondamentaux*, 1 *Revue Belge de Droit International* (2001), 128, at 141.

¹⁶ See for instance United Nations, *Programme for the Further Implementation of Agenda 21*, G/RES/S-19/2 (28 June 1997), paras. 23–32.

¹⁷ The principles of the 1992 Rio Declaration on Environment and Development are often cited as a basis for these concepts, for instance: 3 and 4 (intergenerational equity and integration) or 8 (sustainable use); United Nations Conference on Environment and Development, *Rio Declaration on Environment and Development*, UN Doc. A/CONF.151/26 (Rio de Janeiro, 1992). See for instance Sands et al. (2012), *supra* note 7, p. 207 or Barral (2012), *supra* note 15, pp. 380–381.

¹⁸ United Nations, *Agenda for Development*, A/RES/51/240 (15 October 1997).

sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it,”¹⁹ and it is part of international law, as explained by the Permanent Court of Arbitration in the *Iron Rhine* case: “international (...) law require[s] the integration of appropriate environmental measures in the design and implementation of economic development activities.”²⁰ MDBs are actors of the international agenda for the integration of sustainable development. Indeed, they are international organizations, with the World Bank being a specialized agency of the United Nations since 1947²¹; therefore, the principle of sustainable development applies to them, as recognized by the international community.²²

The three pillars of sustainable development are generally integrated by MDBs: environmental and social considerations come alongside economic considerations. While sustainable development is already included in the European Bank for Reconstruction and Development’s Charter,²³ other MDBs have included the principle of integration in their strategic documents. For instance, the Asian Development Bank’s “Strategy 2020” directs the institution’s focus on three agendas: inclusive economic growth, environmentally sustainable growth and regional integration.²⁴ The African Development Bank announced that economic inclusiveness and sustainable development shall be mainstreamed in the implementation of its strategy.²⁵ The Inter-American Development Bank mentions gender equality, climate change and sustainability amongst its cross-

19 United Nations Conference on Environment and Development (1992), *supra* note 17.

20 *Award in the Arbitration regarding the Iron Rhine* (2005), *supra* note 7.

21 *Agreement between the United Nations and the International Bank for Reconstruction and Development*, 16 U.N.T.S. 346 (1947). See that matter P. Dann, *The Law of Development Cooperation, A Comparative Analysis of the World Bank, the EU and Germany* (Cambridge, UK and New York, USA: Cambridge University Press, 2013), pp. 263–283.

22 See part 4.2 *infra*. See Handl (1998), *supra* note 8. The paper will not examine the debates around sustainable development’s application to MDBs; on that matter see for instance D. Bradlow, “International Law and the Operations of the International Financial Institutions”, in D.D. Bradlow and D.B. Hunter (eds.), *International Financial Institutions and International Law* (The Netherlands: Kluwer Law International, 2010), pp. 19–21.

23 EBRD, “Agreement Establishing the European Bank for Reconstruction and Development”, signed on 29 May 1990, Art. 2.1.vii, available at: <<http://www.ebrd.com/news/publications/institutional-documents/basic-documents-of-the-ebrd.html%20>>, accessed 1 April 2016.

24 ADB, *Strategy 2020, The Long-Term Strategic Framework of the Asian Development Bank 2008–2020*, p. 1, available at: <<https://www.adb.org/sites/default/files/institutional-document/32121/strategy2020-print.pdf>>, accessed 14 November 2016.

25 AfDB, *Regional Integration Policy and Strategy (RIPoS) 2014–2023. Integrating Africa: Creating the Next Global Market* (2015), p. 11, available at: <http://www.afdb.org/fileadmin/uploads/afdb/Documents/Policy-Documents/Regional_Integration_Strategy_RIPoS_-2014-2023_-Approved_-_Rev_1_-_11_2014.pdf>, accessed 26 September 2016.

cutting issues for 2010–2020.²⁶ In its 2013 mission statement, the World Bank Group reformulates the integration principle by affirming that ending poverty and promoting shared prosperity “requires promoting environmental, social, and fiscal sustainability.”²⁷ The Bank also declares that “The three pillars of sustainable development – economic growth, environmental stewardship, and social inclusion – carry across all sectors of development (...) The question (...) today is not *whether* to embrace sustainable development but *how*.”²⁸

2.2 The emulation phenomenon between the international effort for sustainable development and MDBs

It is often contended that the integration of environmental considerations in MDBs started after the Rio Conference. In fact, MDBs’ integration of sustainable development is partly the product of the emulation phenomenon between MDBs and the international effort for sustainable development, starting with the Stockholm Conference.²⁹ The integration process has therefore been taking place for nearly a half-century, during which MDBs have developed substantive instruments – the environmental and social safeguards – and procedural instruments – the accountability mechanisms – in order to implement sustainable development in MDBs’ projects.

The substantive instruments, the safeguards, first delimit the eligibility of a state or company (hereinafter, a “Borrower”)³⁰ for funding, and then, during project implementation, define the Borrower’s obligations regarding social and environmental matters.³¹ These safeguards therefore translate into MDB

26 IADB, *Update to Institutional Strategy 2010–2020, Partnering with Latin America and the Caribbean to Improve Lives* (March 2015), p. 1, available at: <<http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=39556684>>, accessed 26 September 2016.

27 World Bank, *The World Bank Group Goals: End Extreme Poverty and Promote Shared Prosperity*, p. 7, available at: <<https://openknowledge.worldbank.org/bitstream/handle/10,986/20,138/899250WPOBox380PUBLIC00WB0goals2013.pdf?sequence=1&isAllowed=y>>, accessed 17 April 2017.

28 World Bank, “Sustainable Development: Overview; Context”, available at: <<http://www.worldbank.org/en/topic/sustainabledevelopment/overview>>, accessed 17 April 2017.

29 Other important factors have contributed to the integration of sustainable development, see *supra* note 10.

30 The paper refers to a recipient of MDB loans or grants as a “Borrower.”

31 L. Boisson de Chazournes, “Policy Guidance and Compliance: The World Bank Operational Standards”, in D. Shelton (ed.), *Commitment and Compliance: The Role of Non-Binding Norms in the International Legal System* (Oxford: Oxford University Press, 2000), pp. 282–285; S. de Moerloose, *The World Bank’s Sustainable Development Approach and the Need for a Unified Field of Law and Development Studies in Argentina*, 8 *Law and Development Review*, no. 2 (December 2015), 365–366.

conditionality in grant and loan agreements.³² The type and classification of environmental and social safeguards is specific to each MDB: some are binding, some are approved by the Board, some are specific to a lending instrument.³³ They have numerous denominations and diverse architectures.³⁴ The procedural instruments are the MDBs' accountability mechanisms. They contribute to the "transplantation"³⁵ of sustainable development as understood in the safeguards in the Borrower's system where it influences and regulates behaviors.³⁶ The accountability mechanisms have diverse jurisdictions and proceedings and operate with different sets of environmental and social safeguards.³⁷ Just like judicial bodies, these quasi-judicial bodies participate in the development of international law.³⁸ The environmental and social safeguards are interpreted and applied by the accountability mechanisms,³⁹ whereby they are defined and

³² De Moerloose (2014), *supra* note 12.

³³ H. Himberg, *Comparative Review of Multilateral Development Bank Safeguard Systems, Main Report and Annexes* (May 2015), 1, available at: <https://consultations.worldbank.org/Data/hub/files/consultation-template/review-and-update-world-bank-safeguard-policies/en/phases/mdb_safeguard_comparison_main_report_and_annexes_may_2015.pdf>, accessed 14 April 2016. See for instance, on the World Bank Development Policy Operations which exceed the scope of this paper, see P. Dann and M. Riegner, *Managing Social and Environmental Risk in World Bank Development Policy Operations*, Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH, April 2015), p. 1, available at: <http://dann.rewi.hu-berlin.de/doc/Dann_2015_Managing_social-environmental-risks-world-bank.pdf>, accessed 15 November 2016.

³⁴ Himberg (2015), *supra* note 33.

³⁵ B. Z. Tamanaha, *The Primacy of Society and the Failures of Law and Development*, 44 Cornell International Law Journal, no. 2 (2011), 209–248, at 225.

³⁶ See for instance on environmental conditionality: Di Leva, *International Environmental Law and Development*, 10 The Georgetown International Environmental Law Review (1997–1998), 501–549, at 501; J.W. Head, *Environmental Conditionality in the Operations of International Development Finance Institutions*, 1 The Kansas Journal of Law and Public Policy (1991), 15.

³⁷ See for instance on the World Bank and the European Investment Bank, M.M. Mbengue, S. de Moerloose, *Quasi-Judicial Dialogue: Kenya Electricity Expansion Project before the World Bank and the European Investment Bank's International Accountability Mechanisms*, EJIL: Talk! – Blog of the European Journal of International Law (9.11.2016), available at: <<http://www.ejiltalk.org/quasi-judicial-dialogue-for-the-coherent-development-of-international-law/#more-14715>>, accessed 12 April 2017.

³⁸ On judicial bodies and the creation of international law, see for instance P. Webb, *International Judicial Integration and Fragmentation* (Oxford: Oxford University Press, 2013), pp. 204–209. Mbengue, De Moerloose (2015), *supra* note 37.

³⁹ Mbengue, De Moerloose (2015), *supra* note 37. On the question of the Inspection Panel's interpretation mandate and its evolution, see D. Bradlow, A. Naudé Fourie, *The Operational Policies of the World Bank and the International Finance Corporation: Creating Law-Making and Law-Governed Institutions?* 10 International Organizations Law Review (2013), 3–80, at 41–43; A. Naudé Fourie,

“hardened.”⁴⁰ The substantive and procedural instruments reveal the normative understanding of sustainable development by MDBs and reflect the emulation phenomenon, as explained below.

2.2.1 Before Rio

Environmental considerations had started to integrate MDBs’ activities even before the Stockholm Conference in 1972⁴¹; for instance, the World Bank was the first MDB to appoint an environmental advisor in 1970.⁴² In fact, former President McNamara of the World Bank Group declared in his speech before the Stockholm Conference that guidelines had been prepared in 1970 for the staff on how to weigh environmental factors in projects.⁴³ After the Stockholm Conference, the Inter-American Development Bank records that it was the first MDB to adopt an environmental policy in 1979, mandating that the institution ensure the environmental quality of its operations, avoid adverse impact and support environmental projects.⁴⁴ The same year, the Asian Development Bank

The World Bank Inspection Panel and Quasi-Judicial Oversight, in Search of the “Judicial Spirit” in Public International Law (Utrecht: Eleven International Publishing, 2009), pp. 232–236.

⁴⁰ On MDBs’ role in the development of international law, see B. Kingsbury, “Operational Policies of International Institutions as Part of the Law-Making Process: The World Bank and Indigenous Peoples”, in G.S Goodwin-Gill and S. Talmon (eds.), *The Reality of International Law: Essays in Honour of Ian Brownlie* (Oxford: Clarendon Press, 1999), p. 338; Bradlow, Naudé Fourie (2013), *supra* note 39, p. 61; L. Boisson de Chazournes, “Les Panels d’Inspection”, in Société Française pour le Droit International, *Colloque de Lyon - Droit international et développement* (Paris: Editions A. Pedone, 2015), pp. 118–120; Park (2005), *supra* note 10, pp. 111–141.

⁴¹ Shihata (1992b), *supra* note 10, pp. 4–5.

⁴² The Independent Evaluation Group, *Safeguards and Sustainability Policies in a Changing World. An Independent Evaluation of the World Bank Group Experience* (Washington DC: The World Bank, 2010), p. 6, available at: <<https://publications.iadb.org/handle/11319/2344>>, accessed 3 May 2016

⁴³ R. S. McNamara, *Address to the United Nations Conference on the Human Environment (Stockholm, 8 June 1972)*, p. 6, available at: <<http://documents.worldbank.org/curated/en/123,671,468,154,768,455/pdf/557860WP0Box360y0Robert0S-0McNamara.pdf>>, accessed 14 November 2016.

⁴⁴ IADB, *Inter-American Bank Sustainability Review 2005*, p. 1, available at: <<https://publications.iadb.org/handle/11319/2344>>, accessed 3 May 2016; see also IADB, *The Inter-American Development Bank, Blue Ribbon Panel on the Environment, Final Report of Recommendations* (23 February 2005), p. 13, available at: <<https://publications.iadb.org/bitstream/handle/11319/5443/Blue%20Ribbon%20Panel%20on%20the%20Environment%3A%20%20Final%20Report%20of%20Recommendations.pdf?sequence=1>>, accessed 3 October 2016.

introduced environmental assessment into its operations.⁴⁵ In 1980, the World Bank, the Asian Development Bank, the Inter-American Development Bank and several other financial institutions signed a declaration supporting the systematic inclusion of environmental assessment and evaluation in development activities.⁴⁶ In 1987, the Brundtland Report noted that the World Bank was “reorienting its programs toward greater environmental concerns”⁴⁷ and underlined the importance of environmental and social safeguards: it made a clear reference to MDBs’ substantive instruments, declaring that the role of the World Bank was particularly crucial because its lending conditions were being used as benchmarks by other institutions.⁴⁸ Partly as a consequence of the Brundtland Report, the World Bank’s Environment Department was then created and the environmental and social guidelines were systematically organized in safeguards.⁴⁹

2.2.2 The Rio conference

MDBs were involved in the preparation of the 1992 Rio Conference. The Latin American and Caribbean Commission on Development and Environment, the Inter-American Development Bank and UNEP published *Our Own Agenda* in 1990 to assist the region in preparing for the Conference,⁵⁰ while the World Bank contributed to the Rio Conference mainly through its yearly publication, the *World Development Report*, which declared that environmental protection was an essential part of development.⁵¹ This is equivalent to the principle of integration, which was spelled out afterward as Principle 4 of the Rio declaration. MDBs now implement this principle through their safeguards, which aim to integrate the three pillars of sustainable development. A similar emulation phenomenon

⁴⁵ ADB, *Safeguard Policy Statement*, p. 6, available at: <<http://www.adb.org/sites/default/files/institutional-document/32056/safeguard-policy-statement-june2009.pdf>>, accessed 3 October 2016.

⁴⁶ Shihata (1992b), *supra* note 10, n19.

⁴⁷ Brundtland et al. (1987), *supra* note 14, para. 99.

⁴⁸ *Ibid.* para. 35.

⁴⁹ World Bank, *Environment matters at the World Bank: Rio + 20 (2012)*, p. 2, available at: <<http://documents.worldbank.org/curated/en/700911468340164800/pdf/715960WP0Box370Matters000whole0book.pdf>>, accessed 14 November 2016.

⁵⁰ Latin American and Caribbean Commission on Development and Environment, the IADB and UNEP, *Our Own Agenda*, 1990, cited in IADB, *The Inter-American Development Bank, Blue Ribbon Panel on the Environment*, *supra* note 44.

⁵¹ World Bank, *World Development Report 1992: Development and the Environment* (New York: The World Bank and Oxford University Press, 1992), p. 2.

took place regarding environmental impact assessment. The World Bank had adopted its environmental impact assessment safeguards in 1989⁵²; these then served as inspiration for other MDBs⁵³ as well as States⁵⁴ and contributed to the adoption of Principle 17 of the Rio Declaration.⁵⁵

In addition to environmental and social assessment and management, many policy sectors are now covered by all MDBs. Each institution has provisions addressing at least selected aspects of: biodiversity and natural resources such as water; the prevention and abatement of pollution; community health, safety and security; occupational health and safety; climate change; physical cultural resources and heritage; indigenous people; land acquisition, resettlement and tenure; gender and human rights.⁵⁶ Some policies are very similar, in particular the EBRD's and IFC's, because the former was modeled on the latter.⁵⁷ This list mirrors several principles of the Rio Declaration,⁵⁸ such as Principle 3 on inter-generational and intragenerational equity, Principle 10 on public participation and

52 In fact, EIA were originally introduced in the United States, predating the sustainable development concept: S. Bruhn-Tysk, M. Eklund, *Environmental Impact Assessment – a tool for sustainable development? A case study of biofuelled energy plants in Sweden*, 22 *Environmental Impact Assessment Review* (2002), 132.

53 Stating that MDBs generally follow the World Bank's example, see for instance Boisson De Chazournes (2011), *supra* note 11, pp. 174–175, 178–179; D. B. Hunter, *Civil Society Network and the Development of Environmental Standards*, 8 *Chicago Journal of International Law*, no 2 (Winter 2008), 442–443.

54 M. A. Bekhechi, J.R. Mercier, *The Legal and Regulatory Framework for Environmental Assessments: A Study of Selected Countries in Sub-Saharan Africa; Law, Justice and Development Series* (Washington DC: World Bank Group, 2002).

55 Boisson De Chazournes (2000), *supra* note 31, p. 299.

56 World Bank, *Operations Manual - Operations Policies (OP)*, available at: <<http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/EXTPOLICIES/EXTOPMANUAL/0,menuPK:4,564,185~pagePK:64,719,906~piPK:64,710,996~theSitePK:502,184,00.html>>, accessed 29 April 2016; AfDB Group, *Integrated Safeguards System*, available at: <http://www.afdb.org/fileadmin/uploads/afdb/Documents/Policy-Documents/December_2013_-_AfDB'S_Integrated_Safeguards_System_-_Policy_Statement_and_Operational_Safeguards.pdf>, accessed 29 April 2016; ADB, *Safeguard Policy Statement*, *supra* note 45; EBRD, *Environmental and Social Policy*, available at: <<http://www.ebrd.com/downloads/research/policies/esp-final.pdf>>, accessed 3 May 2016; IADB, *Operational Policies*, available at: <<http://www.iadb.org/en/mici/relevant-operational-policies,8166.html>>, accessed 3 May 2016; IFC, *Performance Standards on Environmental and Social Sustainability*, available at: <http://www.ifc.org/wps/wcm/connect/115482804a0255db96bfdd1a5d13d27/PS_English_2012_Full-Documents.pdf?MOD=AJPERES>, accessed 3 May 2016.

57 ADB, *Safeguard Policy Statement*, *supra* note 45, Attachment 1, para. 18.

58 C. Di Leva, “International Environmental Law, the World Bank, and IFIs”, in D. Bradlow and D. Hunter (eds.), *International Financial Institutions and International Law* (The Netherlands: Kluwer Law International, 2010), pp. 343–385.

access to information, Principle 15 on precaution, Principle 17 on environmental impact assessment or Principle 22 on Indigenous people. Rio's principle of integration is now considered a legal basis for the inclusion of environmental conditionality, such as safeguards.⁵⁹

Several months after the Rio Conference, the General Assembly invited the MDBs to report to the Commission on Sustainable Development on their implementation of the Conference's program of action, Agenda 21.⁶⁰ The four Regional Development Banks and the World Bank Group all serve as Agencies of the Global Environmental Facility, which received a special mandate in the financing of Agenda 21.⁶¹ The World Bank created a Vice Presidency for Environmentally Sustainable Development.⁶² One year after Rio, in 1993, the World Bank was the first MDB to create an international accountability mechanism, the Inspection Panel.⁶³ All the other MDBs followed over the next 15 years. Accountability mechanisms are a part of the emulation phenomenon between the international sustainable development effort and MDBs. For instance, they embody and promote the implementation of Rio Principle 10 on Public Participation,⁶⁴ as they offer individuals the opportunity of access to quasi-judicial proceedings.

2.2.3 The Johannesburg Summit and beyond

After Rio, the emulation phenomenon continued. For instance, the World Bank launched its second environment-related World Development Report, "Sustainable Development in a Dynamic World"⁶⁵ at the 2002 Johannesburg Summit.⁶⁶ Mirroring the Summit, which is considered to have prioritized social

⁵⁹ Sands et al. (2012), *supra* note 7, pp. 216, 43.

⁶⁰ United Nations, *Institutional arrangements to follow up the United Nations Conference on Environment and Development*, A/RES/47/191 (22 December 1992), para. 23.

⁶¹ *Ibid.* para. 33.14.iii.

⁶² The World Bank, *Environmentally Sustainable Development Vice Presidency*, available at: <<https://archivesholdings.worldbank.org/environmentally-sustainable-development-vice-presidency>>, accessed 14 November 2016.

⁶³ The World Bank Inspection Panel, "About Us", available at: <<http://ewebapps.worldbank.org/apps/ip/Pages/AboutUs.aspx>>, accessed 14 November 2016.

⁶⁴ L. Boisson de Chazournes, "The World Bank Inspection Panel: About Public Participation and Dispute Settlement", in T. Treves, A. Fodella, A. Tanzi, M. Frigessi di Rattalma (eds.), *Civil Society, international courts and compliance bodies* (The Hague: T.M.C. Asser Press, 2005), pp. 190–191.

⁶⁵ World Bank, *World Development Report 2003: Sustainable Development in a Dynamic World, Transforming Institutions, Growth, and Quality of Life* (New York: The World Bank and Oxford University Press, 2003).

⁶⁶ The Independent Evaluation Group (2010), *supra* note 42, p. 7.

and economic development over the environmental pillar,⁶⁷ the World Development Report declares that the core development challenges are growth and the fight against poverty, while “social and environmental assets”⁶⁸ should be taken “better care of.”⁶⁹ Moreover, just like the World Bank, other MDBs also address the implementation of sustainable development through their publications. For instance, the Inter-American Development Bank has produced a Sustainability Report each year since 2005, informing on the Bank’s yearly contribution to sustainability and on sustainability in the region.⁷⁰

Later, in 2012, the Rio + 20 Conference recognized MDBs’ contributions in advancing the sustainable development agenda and acknowledged their role in mobilizing resources for sustainable development.⁷¹ This financing responsibility has definitely been taken up by MDBs, as declared in 2015 in several joint statements in the wake of the adoption of the 2030 Agenda for Sustainable Development (hereinafter Agenda 2030), which entails the SDGs.⁷² In April, they declared, together with the IMF, that MDBs fully supported the SDGs’ comprehensive approach, which will include working with Borrowing Countries to translate the SDGs into national targets and introduce and implement the SDGs’ policies and programs; they added that they must work together to generate the financial resources and achieve the SDGs’ transformative vision.⁷³

67 J.E. Viñuales, “The Rio declaration: A Preliminary Study”, in J.E. Viñuales (ed.), *The Rio declaration on Environment and Development, a Commentary* (Oxford: Oxford University Press, 2015), p. 7.

68 World Bank, *World Development Report 2003*, *supra* note 65, p. ix.

69 *Ibid.*

70 See IADB, *Inter-American Development Bank Sustainability Report 2015* (April 2016), available at: <<https://publications.iadb.org/handle/11319/7532?locale-attribute=en&locale-attribute=es>>, accessed 26 September 2016. The IADB declares, in its Environment and Safeguards Compliance Policy, that the policy is grounded in the principles of sustainable development as set out in the Rio Declaration, Agenda 21 and in the Johannesburg Summit, see IADB, *Environment and Safeguards Compliance Policy* (19 January 2006), available at: <<http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=665902>>, accessed 1 December 2016.

71 United Nations Conference on Sustainable Development (2012), *supra* note 1, para. 54.

72 United Nations (2015), *supra* note 3.

73 Heads of the AfDB, the ADB, the EBRD, the European Investment Bank, the IADB, the World Bank Group, and the International Monetary Fund, *From Billions to Trillions – Transforming Development, Finance Post-2015 Financing For Development: Multilateral Development Finance* (16 April 2015), paras. 1, 4–5, available at: <<http://www.worldbank.org/en/news/press-release/2015/04/16/joint-statement-mdbs-imf-head-financing-for-development>>, accessed 29 February 2016. The integral approach to sustainable development is not without difficulties, notably regarding resource constraints; some scholars argue that it would be more realistic for countries to prioritize and sequence different development agendas in order to gradually achieve the SDGs. Citing the example of South Korea, see Y.-S. Lee, *General Theory of Law and Development*,

In July 2015, they jointly published an explanation of what this vision meant in practice, declaring that to help meet the challenge of the SDGs, MDBs were stepping up their efforts to make the best possible use of their respective business models as well as enhance the leverage of their financing, technical assistance and knowledge. They added that they were building up MDB cooperation across the SDGs agenda; planning financial support of over \$400 billion during the first 3 years of the SDG period.⁷⁴ The Addis Ababa Action Agenda of the Third International Conference on Financing for Development has insisted on this call on the MDBs, even declaring that “development banks should make optimal use of their resources (...) and should update and develop their policies in support of the post-2015 development agenda.”⁷⁵

Finally, MDBs issued a joint statement in November 2015 at the United Nations Climate Change Conference, whereby they commit to working together to increase climate investments substantially, in the context of the development needs of Borrowing Countries and of the SDGs.⁷⁶ Afterward, the African Development Bank addressed the implementation issues faced by the African Continent in its double transition toward the global Agenda 2030 and the African Union’s 2013 “Agenda 2063,” by co-publishing “MDGs to Agenda 2063 /SDGs Transition report 2016.”⁷⁷ It appears that MDBs now support their own sustainable development agenda, which consists of, in part, proposing answers to the practical implementation of Principle 4 through their activities. For

50 Cornell International Law Journal, no. 3 (forthcoming December 2017), 13–14, available at: <<https://ssrn.com/abstract=2951317>>, accessed 12 April 2017. However, this practical path seems difficult to reconcile with the principle of integration (see part 2.1 *supra*) and with the 2030 Agenda itself (United Nations (2015), *supra* note 3).

74 AfDB, ADB, EBRD, European Investment Bank, IADB, World Bank Group, International Monetary Fund, *From Billions to Trillions: MDB Contributions to Financing For Development* (July 2015), p. 2, available at: <<http://www.worldbank.org/mdgs/documents/FfD-MDB-Contributions-July-13-2015.pdf>>, accessed 29 February 2016.

75 Third International Conference on Financing for Development (2015), *supra* note 2, para. 70.

76 AfDB, ADB, EBRD, European Investment Bank, IADB, World Bank Group, *Joint Statement by the Multilateral Development Banks at Paris, COP21 Delivering Climate Change Action at Scale: Our Commitment to Implementation*

(30 November 2015), p. 1, available at: <http://www.worldbank.org/content/dam/Worldbank/document/Climate/Joint%20MDB%20Statement%20Climate_NOV%202028_final.pdf>, accessed 29 February 2016.

77 Economic Commission for Africa, African Union, AfDB Group, United Nations Development Programme, *MDGs to Agenda 2063 / SDGs Transition report 2016: Towards an integrated ad coherent approach to sustainable development in Africa* (September 2016), available at: <http://www.afdb.org/fileadmin/uploads/afdb/Documents/Generic-Documents/MDG-SDG_Transition_Report_eng_fin.pdf>, accessed 26 September 2016.

instance, in addition to funding sustainable development-related projects,⁷⁸ MDBs host events on sustainable development challenges, such as the Asian Development Bank's knowledge-sharing forum on anti-wildlife trafficking, attended by national agencies and several international NGOs such as the World Wildlife Fund,⁷⁹ or the World Bank's "International Conference on Sustainable Development through Quality Infrastructure Investment" organized with the Government of Japan.⁸⁰ MDBs also publish blogs which analyze sustainable development issues and explain the activities of institutions in this regard, such as the ADB's blogs on SDGs⁸¹ and Social Development.⁸²

78 MDB channel funds destined at addressing sustainable issues. For instance, MDBs participate in multidonor initiative for the environment, such as the AfDB's "Climate for Development in Africa Programme", an initiative which aims at financing the preparation and implementation of climate-resilient development policies and programs (Economic Commission for Africa, African Union Commission, AfDB, *ClimDev-Africa Special Fund Roundtable Meeting, 25 April 2012, Concept Note*, available at: <<http://www.afdb.org/fileadmin/uploads/afdb/Documents/Generic-Documents/Concept%20Note%20ClimDev.pdf>>, accessed 26 September 2016), or the Sustainable Energy Fund for Africa, to support engagement in small to medium-sized renewable energy and energy efficiency space (AfDB Group, "Sustainable Energy for All (SE4ALL)", available at: <<http://www.afdb.org/en/topics-and-sectors/initiatives-partnerships/sustainable-energy-for-all-se4all/>>, accessed 26 September 2016). MDBs also direct part of their funds to sectors related to sustainable development, such as the IADB's Environment and Natural Disasters sector which amounts to 183 projects and 7.05 billion USD financing (IADB, "Environment and Natural Disasters: Overview", available at: <<http://www.iadb.org/en/sector/environment-and-natural-disasters/overview,18,339.html>>, accessed 26 September 2016), the EBRD's Energy sector, with direct investments in renewable energy worth over 2.2 billion USD between 2006–2013 (EBRD, "The EBRD's Energy Strategy: Renewable Energy", available at: <<http://www.ebrd.com/what-we-do/sectors-and-topics/ebrd-energy-strategy-renewable.html>>, accessed 26 September 2016). Some MDBs set sustainable development targets for themselves, such as ADB's corporate gender target, which holds *inter alia* that by 2016 45% of all its operations shall address gender equality objectives (ADB, "Gender and Development: Closing the Gender Gap", available at: <<https://www.adb.org/themes/gender/overview>>, accessed 26 September 2016).

79 ADB, "Environment: Activities: Freeland Foundation Shares Anti-Wildlife Trafficking Program" (16 July 2016), available at: <<https://www.adb.org/themes/environment/activities>>, accessed 26 September 2016.

80 World Bank, "International Conference on Sustainable Development through Quality Infrastructure Investment" (20–21 January 2016), available at: <<http://www.worldbank.org/en/events/2016/01/20/international-conference-on-sustainable-development-through-quality-infrastructure>>, accessed 26 September 2016.

81 ADB, Asian Development Blog, "Social Development and Protection", available at: <<https://blogs.adb.org/subjects/post-2015-development-agenda>>, accessed 26 September 2016.

82 ADB, Asian Development Blog, "Post-2015 Development Agenda", available at: <<https://blogs.adb.org/archive/subject/42>>, accessed 26 September 2016.

Regarding safeguards, the World Bank adopted new policies in August 2016 that place more responsibility on Borrowing Countries, which will enter into force in 2018. Notwithstanding the debates surrounding the adoption of these new standards,⁸³ time will tell how sustainable development will be implemented in practice through this new system.

3 Sustainable development in MDB safeguards: convergence and plurality

The consequence of the emulation phenomenon between the international sustainable development effort and MDBs is the unquestionable integration of sustainable development in MDB mandates,⁸⁴ for instance through environmental and social safeguards. As seen above, MDB safeguards converge in the sense that they cover many similar policy sectors.⁸⁵ However, many of these policy sectors are then defined differently by each MDB, for instance regarding water and climate change.⁸⁶ As to water, the World Bank supports the protection of natural habitats, which includes water areas where the ecosystem is formed by native plant and animal species, and not essentially modified by human activity⁸⁷; it “expects borrowers to apply [,] a precautionary approach to natural resource management.”⁸⁸ The African Development Bank has a stricter safeguard, whereby Borrowers must avoid “significantly altering flow regimes in ways that prevent water resources from fulfilling their functions for important upstream and downstream ecosystems and their services to local

83 See for instance *United Nations Special Procedures Mandate Holders’ letter to the World Bank President Dr. Jim Yong Kim* (12 December 2014), available at: <<http://www.ohchr.org/Documents/Issues/EPoverty/WorldBank.pdf>>, accessed 15 November 2016; M. Igoe, “World Bank chief defends new safeguards”, Devex, 5 August 2016, available at: <<https://www.devex.com/news/world-bank-chief-defends-new-safeguards-88545>>, accessed 15 November 2016. The analysis of the new safeguards, which will enter into force in 2018, exceed the scope of this research project.

84 See for instance Shihata (1992b), *supra* note 10; Handl (1998), *supra* note 8.

85 See part 2.2.2 *supra*. Contending that there is a tendency towards harmonization of public participation standards across the development industry, including MDBs, see D.D. Bradlow, M.S. Chapman, *Public Participation and the Private Sector: The Role of Multilateral Development Banks in the Evolution of International Legal Standards*, 4 Erasmus Law Review, no. 2 (2011), 119.

86 Himberg (2015), *supra* note 33, 34, pp. 77–78.

87 World Bank, *Operations Manual*, *supra* note 56, OP 4.04, Annex A – Definitions, 1(a).

88 *Ibid.* OP 4.04.1.

communities.”⁸⁹ In fact, certain stakeholders such as the United States Treasury had recommended that the World Bank place a heightened focus on water resource management in its policies, especially in case of dam development.⁹⁰ Regarding climate change, the World Bank states that the environmental assessment should take into account global environmental aspects, which include climate change.⁹¹ Other MDBs offer a more detailed description of climate change. The ADB demands that the environmental assessment identify greenhouse gas emissions⁹² and that, if significant quantities of emissions are expected or produced, the Borrower must quantify, monitor and when feasible reduce or offset the emissions.⁹³ The AfDB requires that each project be screened by the Bank for climate change risk, and then be treated following the category’s adaptation and evaluation procedures.⁹⁴ In both examples, one can observe that although there seems to be a general common definition of sustainable development regarding water and climate change, the requirements for these policy sectors are in fact specified differently in each organization.

Furthermore, some elements that could be part of the definition of sustainable development are not common to all MDBs. When indigenous people may be affected by their development activities, not all MDBs demand their “free, prior and informed consent” as expressed in the United Nations Declaration on the Rights of Indigenous Peoples⁹⁵ and in the ILO Convention 169⁹⁶: the World Bank demands the “free, prior and informed consultation”;⁹⁷ the AfDB requests “meaningful consultation,” which must be free, prior and informed, as well as “broad community support”;⁹⁸ while the ADB requires the “consent,” which

⁸⁹ AfDB Group, *Integrated Safeguards System*, *supra* note 56, Operational Safeguard 3, p. 42.

⁹⁰ United States Treasury, *United States Comments on World Bank Safeguards Review*, p. 6, available at: <<https://www.treasury.gov/resource-center/international/development-banks/Documents/United%20States%20Comments%20on%20WB%20Safeguards%20Review.pdf>>, accessed 29 April 2016.

⁹¹ World Bank, *Operations Manual*, *supra* note 56, OP 4.01.3, footnote 5.

⁹² ADB, *Safeguard Policy Statement*, *supra* note 45, Appendix 1.7.

⁹³ *Ibid.* Appendix 1.39.

⁹⁴ AfDB Group, *Integrated Safeguards System*, *supra* note 56, Operational Safeguard 1, p. 25.

⁹⁵ United Nations, *United Nations Declaration on the Rights of Indigenous Peoples*, art. 10, 11.II, 19, 28.I, 29.II, 32.II, UN Doc. A/RES/61/295 (13 September 2007).

⁹⁶ International Labour Organization, *C169 – Indigenous and Tribal Peoples Convention*, art. 16. II, 76th ILC session (27 June 1989).

⁹⁷ World Bank, *Operations Manual*, *supra* note 56, OP 4.10, 4.10 Annexes A, B, C.

⁹⁸ AfDB Group, *Integrated Safeguards System*, *supra* note 56, Operational Safeguard 1, p. 27.

refers to “broad community support.”⁹⁹ On the other hand, the IFC,¹⁰⁰ the IADB¹⁰¹ and the EBRD¹⁰² all refer to Indigenous People’s free, prior and informed consent under certain circumstances. As to the ILO’s “Core Labor Standards,”¹⁰³ not all MDBs require the respect of these standards: while the EBRD does,¹⁰⁴ the World Bank doesn’t and the ADB only prohibits forced and child labor.¹⁰⁵ The United Nations adopted in 2006 the Convention on the Rights of Persons with Disabilities.¹⁰⁶ When considering individuals or groups potentially affected by their projects, disability is not necessarily taken into account by MDBs¹⁰⁷: the IFC does include disability,¹⁰⁸ the ADB doesn’t, while the AfDB only includes the “physically handicapped.”¹⁰⁹ As a final example, most MDBs have a list of prohibited activities, or exclusion list, but their content differs across organizations: only the IADB’s list prohibits “Non-compliance with workers fundamental principles and rights at work,”¹¹⁰ only the AfDB bans investments in precious stones, pearls and gold,¹¹¹ the EBRD’s list is the only one that doesn’t mention child labor,¹¹² while the World Bank has no exclusion list.

99 ADB, *Safeguard Policy Statement*, *supra* note 45, *inter alia* Glossary, Consent of Affected Indigenous Peoples Communities.

100 IFC, *Performance Standard 7: Indigenous Peoples*, *supra* note 56, paras. 2, 13.

101 IADB, *Operational Policy on Indigenous Peoples*, footnote 10, available at: <<http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=39430632>>, accessed 3 May 2016.

102 EBRD, *Environmental and Social Policy*, *supra* note 56, Performance Requirement 7, para. 2, footnote 2.

103 International Labour Organization, *ILO declaration on Fundamental Principles and Rights at Work*, 86th ILC session (18 June 1998).

104 EBRD, *Environmental and Social Policy*, *supra* note 56, Performance Requirement 2, paras. 29, 35.

105 ADB, *Safeguard Policy Statement*, *supra* note 45, Appendix 5. Prohibited Investment Activities List, (i).

106 United Nations, *Convention on The Rights of Persons with Disabilities*, UN Doc. A/RES/61/611 (6 December 2006).

107 Himberg (2015), *supra* note 33, p. 36.

108 IFC, *Performance Standard 1: Assessment and Management of Environmental and Social Risks and Impacts*, *supra* note 56, footnote 18.

109 AfDB Group, *Integrated Safeguards System*, *supra* note 56, Operational Safeguard 1, p. 26.

110 IADB, *List of Excluded Activities for Non-Sovereign-Guaranteed (NSG) Operations*, last bullet-point and footnote 11, available at: <<http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=1904138>>, accessed 3 May 2016.

111 AfDB Group, *Integrated Safeguards System*, *supra* note 56, Policy Statement, footnote 5, p. 18.

112 EBRD, *Environmental and Social Exclusion List*, available at: <http://www.ebrd.com/downloads/about/sustainability/Environmental_and_Social_Exclusion_and_Referral_Lists_15092008.pdf>, accessed 3 May 2016.

These examples show that, although there is regulatory convergence toward a general definition of sustainable development, the specific requirements in many policy areas are not identical, while many others are simply not part of MDBs' common definitions of sustainable development. One can observe that there is less convergence between MDBs around the social pillar than the environmental one.¹¹³ A common law of sustainable development for MDBs has not yet been achieved.

4 Harmonization of safeguards

4.1 Aid effectiveness and international harmonization efforts

A complete harmonization of environmental and social requirements would constitute a common law of sustainable development for MDBs. In fact, the international community has called for the harmonization of Donors' practices for over 10 years, issuing several international declarations on aid effectiveness which were endorsed by MDBs. For instance, the "Rome Declaration on Harmonization" in 2003 had a triple vision: reducing the number of different procedures required by Donors from Borrowers and implementing good practices, while making an increased use of Borrower systems.¹¹⁴ Then, the 2005

113 J. von Bernstorff, P. Dann, *Reforming the World Bank's Safeguards. A Comparative Legal Analysis* (Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH, July 2013), p. 24, available at: <https://www.jura.uni-tuebingen.de/professoren_und_dozenten/vonbernstorff/projekte/WorldBanksSafeguardsacomparativelegalanalysis.pdf>, accessed 4 May 2016. With the time, the number of policy areas covered by MDBs social safeguards seems to expand. The current World Bank social safeguards are for instance more limited than the IFCs, which were adopted afterward. This will evolve with the new World Bank safeguards, which include for instance labor and working conditions; see for instance World Bank, *Review and Update of the World Bank's Safeguards Policies, Environmental and Social Safeguards (proposed Third Draft)* (4 August 2016), p. 22, available at: https://consultations.worldbank.org/Data/hub/files/consultation-template/review-and-update-world-bank-safeguard-policies/en/materials/board_paper_for_es_framework_third_draft_for_disclosure_august_4_2016.pdf, accessed 4 April 2017.

114 First High-Level Forum on Aid Effectiveness, *Rome Declaration on Harmonization*, February 2003, p. 11, available at: <<http://www.oecd.org/dac/effectiveness/31451637.pdf>>, accessed 26 April 2016. The Paris Declaration states that: "Country systems and procedures typically include, but are not restricted to, national arrangements and procedures for public financial management, accounting, auditing, procurement, results frameworks and monitoring", see Second High-Level Forum on Aid Effectiveness, *Paris Declaration on Aid Effectiveness*, March 2005, para.17, available at: <<http://www.oecd.org/dac/effectiveness/34428351.pdf>>, accessed

“Paris Declaration on Aid Effectiveness,” building on the Rome Declaration, also encouraged the use of Borrowers’ systems and of common arrangement and procedures by Donors,¹¹⁵ while promoting in particular a harmonized approach to environmental assessment, adding that similar efforts were also needed for other issues such as gender equality.¹¹⁶ The “Accra Agenda for Action” adopted in 2008 added that both Donors and Borrowers should work “to agree on a limited set of mutually agreed conditions based on national development strategies.”¹¹⁷ The aid effectiveness agenda thus encouraged MDBs to unify their safeguards based on best practices and use Borrowers’ systems whenever possible.

This has had practical implications for the MDBs. In order to use Borrowers’ systems to address environmental and social safeguard issues, the World Bank launched a pilot program in 2005.¹¹⁸ Codified in OP. 4.0,¹¹⁹ the policy states that, before using a Borrower’s system, the World Bank first needs to determine whether the Borrower’s policies are equivalent, whether its implementation is acceptable and, if necessary, which gaps in the system need to be filled.¹²⁰ Therefore, the objectives of supporting Borrowers’ own policies and limiting the proliferation of World Bank safeguards without watering down the environmental and social performance of its projects result, in practice, in a rather complex and intrusive process.¹²¹ Interestingly, regulatory convergence has sometimes taken place the other

26 April 2017. The aid effectiveness agenda is interpreted as also encouraging the use of country’s social and environmental framework, see for instance World Bank, *The World Bank’s Safeguard Policies Proposed Review and Update Approach Paper* (10 October 2012), para. 18, p. 5, available at <https://consultations.worldbank.org/Data/hub/files/consultation-template/review-and-update-world-bank-safeguard-policies/en/phases/safeguardsreviewapproachpaper.pdf>, accessed 7 April 2017.

¹¹⁵ Boisson De Chazournes (2011), *supra* note 11, p. 183. See also C. Di Leva (2010), *supra* note 58, p. 363.

¹¹⁶ *Paris Declaration on Aid Effectiveness* (2005), *supra* note 114, paras. 32–42.

¹¹⁷ Third High-Level Forum on Aid Effectiveness, *Accra Agenda for Action*, para. 25, available at: <<http://www.oecd.org/dac/effectiveness/34,428,351.pdf>>, accessed 26 April 2016.

¹¹⁸ The Independent Evaluation Group (2010), *supra* note 42, p. 85. Bradlow, Chapman (2011), *supra* note 87, pp. 95–96.

¹¹⁹ World Bank, *Operations Manual*, *supra* note 56, OP 4.00.

¹²⁰ *Ibid.* OP 4.00.2, 4.00.3.

¹²¹ The Independent Evaluation Group (2010), *supra* note 42, pp. 85–87. A. Ninio, “Postscript and Update”, in D. Freestone (ed.), *Legal Aspects of Sustainable Development: The World Bank and Sustainable Development: Legal Essays* (The Netherlands: Martinus Nijhoff Publishers, 2012), p. 67. The OP 4.00 was revised in April 2013 and conserves procedures on equivalence, acceptability and gap filling.

way around, from the bottom-up rather than top-down: instead of the Bank using the Borrower's system, Borrowers have incorporated certain World Bank requirements.¹²²

Furthermore, in the wake of the aid effectiveness agenda, there has been a quest for harmonization of environmental and social requirements among MDBs in some fields, for instance environmental impact assessment as seen above.¹²³ MDBs continue to get inspiration from one another at the time of updating safeguards.¹²⁴ A Working Group on Environment and Social Standards, including representatives of various MDBs, meets twice a year to discuss issues regarding environmental and social standards and collaborate when needed.¹²⁵ MDBs sometimes borrow other MDBs' safeguards in their loan agreements, especially in co-financed projects.¹²⁶ But, despite these efforts and the existence of policy areas where regulatory convergence is apparent, as shown above, there is no doubt that the environmental and social safeguards are far from being harmonized. MDBs' normative understanding of sustainable development is still fragmented.

¹²² Bekhechi, Mercier (2002), *supra* note 54.

¹²³ See part 2.2.2 *supra*. See also Multilateral Financial Institutions Working Group on Environment, *A Common Framework for Environmental Assessment: A Good Practice Note* (28 February 2005).

¹²⁴ For instance: Himberg's *Comparative Review of Multilateral Development Bank Safeguard Systems* was commissioned by the World Bank in the wake of the review of its safeguard procedures - Himberg (2015), *supra* note 33; ADB, *Safeguard Policy Statement*, *supra* note 45, Attachment 1: Experience of other multilateral financial institutions; AfDB Group, *Integrated Safeguards System*, *supra* note 56, Introduction, p. 6–7 in particular. On the role of the World Bank, see also *supra* note 53.

¹²⁵ AfDB, "Multilateral Financial Institutions Convene in Abidjan for Working Group on Environmental and Social Standards" (7 October 2015), available at: <<http://www.afdb.org/en/news-and-events/article/multilateral-financial-institutions-convene-in-abidjan-for-working-group-on-environmental-and-social-standards-14786/>>, accessed 28 April 2016.

¹²⁶ For instance, the European Investment Bank together with the French Development Agency – AFD – and the German Development Agency have adopted the World Bank Safeguards on Land Acquisition and Involuntary Resettlement in an Electricity Expansion Project in Kenya, co-financed by the three cited institutions and the World Bank, amongst others, see European Investment Bank Complaints Mechanism, *Conclusions Report, Olkaria I and IV Kenya*, Complaint SG/E/2014/07-08 (11 November 2015), Executive Summary and para. 8.4.2, available at: <<http://ewebapps.worldbank.org/apps/ip/PanelCases/97-Inspection%20Panel%20Investigation%20Report.pdf>>, accessed 12 July 2016. The application of the World Bank safeguards in case of co-financing is foreseen in the European Investment Bank's policies, see *European Investment Bank Statement of Environmental and Social Principles and Standards*, 2009, Background, para. 23, available at: <http://www.eib.org/attachments/strategies/eib_statement_esps_en.pdf>, accessed 1 July 2016; see Mbengue, De Moerloose (2015), *supra* note 37.

4.2 Criticisms against harmonization: race to the top or to the bottom?

Although MDBs have endorsed harmonization in principle and have taken some steps toward this goal,¹²⁷ MDB harmonization of safeguards is in fact criticized from three different and sometimes contradictory angles. First, because harmonization may trigger a race to the top; then paradoxically, because harmonization may prompt a race to the bottom. Finally, harmonization is criticized because it may represent a “one-size-fits-all” approach, with major operational difficulties.

To some, in order to avoid a race to the top, by which safeguards would become too strict for Borrowers, competition is better than harmonization¹²⁸: regional MDBs should specialize in their own particular regional context, and in case of overlapping mandates, MDBs should have different comparative advantages, allowing Borrowers to choose their preferred source of financing.¹²⁹ This argument comes as an answer to one of the main difficulties of harmonization: its legitimacy, especially regarding the sovereignty of borrowing states.¹³⁰ Indeed, the fear is that the international effort for sustainable development excludes the voices of Borrowers. Borrowing states being the intended direct beneficiaries of and at the same time generally minority voters in MDBs, the fragmentation of the safeguards and the subsequent possibility to choose the MDB whose safeguards best suit their development strategy comes as a remedy.¹³¹ This discussion relates to the more general discussion on the potential infringement on national sovereignty by aid conditionality.¹³² However, there are three peculiarities in environmental and social conditions or safeguards. They may become more “invasive” of sovereignty once they are harmonized across MDBs; they may violate the political prohibition of MDB

¹²⁷ See part 4.1 *supra*.

¹²⁸ D. Kapur, *Do As I Say Not As I Do: A Critique of G-7 Proposals on Reforming the Multilateral Development Banks*, G-24 Discussion Paper Series, no. 20 (February 2003), pp. 7–10. C. Humphrey, *Time for a New Approach to Environmental and Social Protection at Multilateral Development Banks*, ODI Shaping Policy for Development (April 2016), available at: <<https://www.odi.org/sites/odi.org.uk/files/resource-documents/10419.pdf>>, accessed 12 May 2016.

¹²⁹ Kapur (2003), *supra* note 128, pp. 7–8. See also S.L. Babb, B.G. Carruthers, *Conditionality: Forms, Function, and History*, 4 Annual Review of Law and Social Science (2008), 13–29, at 19.

¹³⁰ Di Leva (1997–1998), *supra* note 36, 502. Kapur (2003), *supra* note 128, p. 8. Humphrey (2016), *supra* note 128, pp. 2–3. See also Bradlow (2015), *supra* note 9, pp. 294–299.

¹³¹ Kapur (2003), *supra* note 128, pp. 7–10.

¹³² See for instance De Moerloose (2014), *supra* note 12, pp. 45–88, at 52–54.

mandates,¹³³ especially regarding human rights which have long been considered “too political”¹³⁴ by the World Bank Group¹³⁵; on the other hand, they generally originate from soft or hard international law rather than from the policy preferences of Donors, which strengthens their legitimacy. There have already been some practical consequences to the stricter character of the safeguards, increasing expenses for Borrowers and prompting a decrease in investment in risky projects, such as many infrastructure projects.¹³⁶ In sum, if the international effort toward harmonization translates into common safeguards for all MDBs, these safeguards may not be aligned with Borrowers’ development strategies¹³⁷ as to the level of environmental and social requirements, costs and type of projects; this would in turn violate the two first principles of aid effectiveness, ownership and alignment.¹³⁸ In consequence, Borrowers may simply avoid MDBs and turn to less demanding investors, such as Donors or Banks from

133 See part 1 *supra*.

134 Hunter (2008), *supra* note 53, p. 460.

135 On the longstanding discussion on the obligation of MDBs to comply with Human Rights, which exceeds the scope of this article, see for instance: I.F.I. Shihata, *The World Bank and Human Rights: An Analysis of the Legal Issues and the Record of Achievements*, 17 *Denver Journal of International Law and Policy*, no. 39 (1988–1989); I.F.I. Shihata, *Human Rights, Development, and International Financial Institutions*, 8 *American University International Law Review*, no. 1 (1992); K. Tomaševski, *The Influence of the World Bank and the IMF on Economic and Social Rights*, 64 *Nordic Journal of International Law* (1995), 385–395; T. Buergenthal, *The World Bank and Human Rights*, 31 *ASIL Studies in Transnational Legal Policy* (1999), 95–101; G. Hernández Uriz, *To Lend or Not To Lend: Oil, Human Rights, and the World Bank’s Internal Contradictions*, 14 *Harvard Human Rights Journal* (2001), 197; M. Darrow, *Between Light and Shadow: The World Bank, the International Monetary Fund and International Human Rights Law* (Portland, Oregon: Hart Publishing, 2003); Naudé Fourie (2009), *supra* note 39, pp. 168, 260–273, citing in particular at 261 *The World Bank Inspection Panel on the Chad-Cameroon and World Bank’s Management Response to the Request for Inspection Panel Review of the Chad-Cameroon Petroleum Development and Pipeline Project*, § 16, available at: <[http://ewebapps.worldbank.org/apps/ip/PanelCases/22-Management%20Response%20\(English\).pdf](http://ewebapps.worldbank.org/apps/ip/PanelCases/22-Management%20Response%20(English).pdf)>, accessed 24 June 2016, and at 261–263 *The Inspection Panel Investigation Report Chad-Cameroon Petroleum and Pipeline Project*, § 34–37, available at: <<http://siteresources.worldbank.org/EXTINSPECTIONPANEL/Resources/ChadInvestigationReporFinal.pdf>>, accessed 24 June 2016; S. McInerney-Lankford, “International Financial Institutions and Human Rights: Select Perspectives on Legal Obligations”, in D. Bradlow and D. Hunter (eds.), *International Financial Institutions and International Law* (The Netherlands: Kluwer Law International, 2010), pp. 239–285; see also Dann (2013), *supra* note 21.

136 Kapur (2003), *supra* note 128, pp. 8–9. Humphrey (2016), *supra* note 128, pp. 3–4.

137 Kapur (2003), *supra* note 128, p. 10.

138 *Paris Declaration on Aid Effectiveness* (2005), *supra* note 114.

emerging economies, like China.¹³⁹ This could also fill in the vicious circle of conditionality incompliance: ¹⁴⁰ Borrowers sign loan agreements entailing safeguards and then fail to comply with the safeguards during project implementation, while Donors do keep on disbursing notwithstanding the incompliance.

To others, the danger of harmonization is to create a race to the bottom, by which every MDB would water down its own specific requirements in order to find a minimal common ground¹⁴¹; this would in turn work as a counter-incentive for Borrowers' consideration of social and environmental issues. Finally, both sides may add that harmonization toughens the one-size-fits-all approach of MDB safeguards: the same type of projects everywhere would need to comply with the same requirements, rendering the system inflexible and forbidding tailored approaches to local circumstances.¹⁴² This critique relates to the operational difficulty of harmonizing safeguards¹⁴³; it is certainly a complex task to find adequate common ground for different institutions with specific mandates, funding, projects, fields of operations and implementation contexts.

4.3 Why still harmonize? The benefits of a race to the top

For the supporters of International Law and Human Rights, a harmonization¹⁴⁴ leading to a race to the top in international law is in fact desirable. First, MDBs would be complying with hard international law, which is already legally binding for borrowing states and may also apply to MDBs; as the ICJ declared in 1973, "international organizations are subjects of international law and, as such, are bound by any obligation incumbent upon them under general rules of international law (...)."¹⁴⁵ This could correspond to the Human Rights-based

¹³⁹ N. Woods, *Whose Aid? Whose Influence? China, Emerging Donors and the Silent Revolution in Development Assistance*, 84 *International Affairs* (Royal Institute of International Affairs 1994-), no. 6 (November 2008), 1205–1221 at 1210–1211; Humphrey (2016), *supra* note 128, pp. 3–4; Bradlow (2015), *supra* note 9, pp. 299–300. Stating that that fewer World Bank conditions are associated with larger aid inflows from China, see D. Hernandez, *Are "New" Donors Challenging World Bank Conditionality*, AidData Working Paper, no. 19 (January 2016), pp. 17–18.

¹⁴⁰ See for instance, J. Svensson, *When is foreign aid policy credible? Aid dependence and conditionality*, 61 *Journal of Development Economics*, no. 1 (2000), 61–84 at 63–64.

¹⁴¹ Di Leva (1997–1998), *supra* note 36, pp. 502–503; Hunter (2008), *supra* note 53, p. 460.

¹⁴² Humphrey (2016), *supra* note 128, p. 3; Hunter (2008), *supra* note 53, p. 460.

¹⁴³ Hunter (2008), *supra* note 53, p. 459.

¹⁴⁴ On the need for harmonization, see Woods (2008), *supra* note 139, pp. 1218–1219; The Independent Evaluation Group (2010), *supra* note 42.

¹⁴⁵ See *Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt*, Advisory Opinion, ICJ Rep. (1980), 73, para. 37; A. Broches, *International Legal Aspects of the Operations of*

approach now promoted by the SDGs.¹⁴⁶ Then, MDBs would be implementing soft law documents they have themselves adopted, such as international declarations regarding sustainable development.¹⁴⁷ If MDBs comply with other soft law instruments, such as the ILO's "Core Labor Standards,"¹⁴⁸ it would have the advantage of contributing to harden these norms in the international arena,¹⁴⁹ *in fine* promoting a holistic implementation of sustainable development. Only sustainable projects would be selected and implemented. As long as Members States entrust MDBs with the power to create safeguards which respect hard and soft international law, the principle of speciality is respected.¹⁵⁰ Finally, a harmonization process that complies with hard and soft international law would create a common law of sustainable development and avoid a race to the bottom.

Borrowers would also need to comply with soft and hard law as included in the harmonized safeguards. The safeguards could serve as trendsetters for other Borrowers' activities, as well as investments by other countries, financial institutions and the private sector.¹⁵¹ They could even serve as model rules to sustainably address

the World Bank, 98 Recueil des cours (1959), 297–409, at 305. The question of the extent of the obligations of MDBs under international law is debated and exceeds the scope on this article; for an analysis of the implications of the international personality of the World Bank see for instance: Handl (1998), *supra* note 8, p. 654, n91–96; on the issue of MDBs and Human Rights; see also *supra* note 125.

146 United Nations (2015), *supra* note 3.

147 See part 2 *supra*.

148 International Labour Organization, *ILO declaration on Fundamental Principles and Rights at Work* (1998), *supra* note 103. On the relationship between safeguards and international law standards, Boisson De Chazournes (2000), *supra* note 31, pp. 297–301.

149 K. Huyser, Note *Sustainable Development: Rhetoric and Reform at the World Bank*, 4 Transnational Law and Contemporary Problems (1994), 253–277 at 271–276; Hunter (2008), *supra* note 53, p. 459.

150 On the principle of speciality, explained as: "[International organizations] are invested by the States which create them with powers, the limits of which are a function of the common interests whose promotion those States entrust to them", see *Legality of the Use by a State of Nuclear Weapon in Armed Conflict, Advisory Opinion*, ICJ Rep. (1996), 226, para. 25 and for instance P.-M. Dupuy and Y. Kerbrat, *Droit International Public* (12th ed., Paris: Précis Dalloz, 2014), pp. 204–205. On the competences of international organizations, see for instance *Id.*, pp. 212–222.

151 Di Leva (1997–1998), *supra* note 36, p. 503; Kingsbury (1999), *supra* note 40, pp. 338–339; Boisson De Chazournes (2000), *supra* note 31, pp. 297–301; Boisson De Chazournes (2005), *supra* note 64, p. 191; A. Vives, *The Role of Multilateral development Institutions in Fostering Corporate Social Responsibility*, 47 Development, no.3 (2004), 48. See on IFC Performance Standards E. Morgera, *Significant Trends in Corporate Environmental Accountability: The New Performance Standards of the International Finance Corporation*, 18 Colorado Journal of Environmental Law and Policy (2007), 151–188 at 186–188.

environmental and social issues affecting multiple states and legislations.¹⁵² If the harmonization of environmental and social safeguards spreads to other areas, it would further enhance predictability and ease compliance while reducing the costs of multirequirement compliance. Indeed, it may be the actual fragmentation that causes increased costs¹⁵³: multiple safeguards mean that Borrowers need to access, learn, understand, implement, comply with and report on countless different materials and formal safeguards, depending on the source of financing. Thus, harmonizing safeguards will increase projects' value-for-money, simplify and streamline the process, increase predictability and coherence. This would enhance the impact of development investments. It would also simplify co-financing between MDBs¹⁵⁴ and the private sector, ensure the sustainability of investments in fragile and conflict-affected areas¹⁵⁵ and, in general, facilitate investments.

There are several challenges remaining. The first is how to harmonize safeguards and create a common law of sustainable development without exaggerating the "one-size-fits-all" approach and foregoing the necessary flexibility of different organizations working in diverse contexts. The adoption of international law as a common ground, especially an approach based on Human Rights, should provide a solution. The different membership of each MDB could make the harmonization task more difficult, but it could also provide a context-specific approach for each MDBs' safeguards.

The second is to create a common law that is not too technical or ambitious so as to compromise implementation by MDBs¹⁵⁶ and Borrowers, or the very

¹⁵² On problems caused by the lack of harmonization between States for water management, see M.M. Mbengue, S. Waltman, *Farmland Investments and Water Rights: The legal regimes at stake*, The International Institute for Sustainable Development (May 2015), p. 46, available at: <<http://www.iisd.org/sites/default/files/publications/farmland-investments-water-rights-legal-regimes-at-stake.pdf>>, accessed 13 May 2016.

¹⁵³ Woods (2008), *supra* note 139, p. 1218.

¹⁵⁴ On safeguard harmonization and the compatibility of co-financing between the New Development Bank and the Asian Infrastructure Investment Bank with other MDBs, see A. Mourant, D. Emeott, J. Ningthoujam and J. Yu, *Ensuring Sustainability in the Asian Infrastructure Investment Bank and the New Development Bank*, A SAIS International Development Practicum Report, John Hopkins School of Advanced International Studies (2015), pp. 27–28, available at: <<http://www.sais-jhu.edu/sites/default/files/SAIS-WRI-PracticumMay2015.pdf>>, accessed 13 May 2016.

¹⁵⁵ P. Stephens, "Risk mismanagement? IFC runs into trouble in Honduras", Devex Newswire, 15 January 2014, available at: <<https://www.devex.com/news/risk-mismanagement-ifc-runs-into-trouble-in-honduras-82656>>, accessed 27 June 2016.

¹⁵⁶ K. Treacle, J. Fox, D. Clark, "Lessons Learned", in D. Clark, J. Fox, K. Treacle (eds.), *Demanding Accountability: Civil-Society Claims and the World Bank Inspection Panel* (Lanham: Rowman and Littlefield, 2003), p. 272.

attractiveness of MDBs. Again, a Human Rights-based approach should provide a reasonable framework. Furthermore, strong and competitive technical assistance for the implementation of harmonized environmental and social safeguards could become a comparative advantage of MDBs.

Conclusion

Although it was not foreseen by most of their charters, MDBs have integrated sustainable development in their activities and policies. This is in part due to the emulation phenomenon which has taken place between the international effort for sustainable development by international conferences and commissions and the development efforts by MDBs. In particular, the emulation phenomenon has had a strong impact on MDBs' creation of substantive instruments – the environmental and social safeguards – and of procedural instruments – the accountability mechanisms – for the integration of sustainable development. However, the analysis of MDBs' substantive instruments demonstrates that their normative understanding of sustainable development is still fragmented. The harmonization of their environmental and social safeguards is desirable in order to consistently integrate sustainable development in MDBs' activities, create a common law of sustainable development and increase investment impacts.

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References

- Agreement between the United Nations and the International Bank for Reconstruction and Development*, 16 U.N.T.S 346 (1947).
- Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt, Advisory Opinion*, International Court of Justice Rep. (1980), 73.
- Legality of the Use by a State of Nuclear Weapon in Armed Conflict, Advisory Opinion*, International Court of Justice Rep. (1996).
- Gabčíkovo-Nagymaros Project (Hungary v. Slovakia), Judgement*, International Court of Justice Rep. (1997), 7.

Award in the Arbitration regarding the Iron Rhine ('Ijzeren Rijn') Railway between the Kingdom of Belgium and the Kingdom of the Netherlands, 27 Reports of International Arbitral Awards (2005) 35.

Pulp Mills on the River Uruguay (Argentina V. Uruguay), Judgment, International Court of Justice Rep. (2010), 14.

United Nations Special Procedures Mandate Holders' letter to the World Bank President Dr. Jim Yong Kim (12 December 2014), available at: <<http://www.ohchr.org/documents/issues/epoverty/worldbank.pdf>>, accessed 15 November 2016.

The Inspection Panel Investigation Report Chad-Cameroon Petroleum and Pipeline Project, available at: <<http://siteresources.worldbank.org/extinspectionpanel/resources/chadinvestigationreportfinal.pdf>>, accessed 24 June 2016.

The World Bank Inspection Panel on the Chad-Cameroon and World Bank's Management Response to the Request for Inspection Panel Review of the Chad-Cameroon Petroleum Development and Pipeline Project, available at: <[http://ewebapps.worldbank.org/apps/ip/panelcases/22-management%20response%20\(english\).pdf](http://ewebapps.worldbank.org/apps/ip/panelcases/22-management%20response%20(english).pdf)>, accessed 24 June 2016.

ADB, "Environment: Activities: Freeland Foundation Shares Anti-Wildlife Trafficking Program" (16 July 2016a), available at: <<https://www.adb.org/themes/environment/activities>>, accessed 26 September 2016.

ADB, "Agreement Establishing the Asian Development Bank", available at: <<http://www.adb.org/sites/default/files/institutional-document/32120/charter.pdf>>, accessed 16 May 2016

ADB, "Gender and Development: Closing the Gender Gap", available at: <<https://www.adb.org/themes/gender/overview>>, accessed 26 September 2016.

ADB, *Safeguard Policy Statement*, available at: <<http://www.adb.org/sites/default/files/institutional-document/32056/safeguard-policy-statement-june2009.pdf>>, accessed 3 October 2016.

ADB, *Strategy 2020, The Long-Term Strategic Framework of the Asian Development Bank 2008–2020*, available at: <<https://www.adb.org/sites/default/files/institutional-document/32121/strategy2020-print.pdf>>, accessed 14 November 2016.

ADB, Asian Development Blog, "Social Development and Protection", available at: <<https://blogs.adb.org/subjects/post-2015-development-agenda>>, accessed 26 September 2016.

ADB, Asian Development Blog, "Post-2015 Development Agenda", available at: <<https://blogs.adb.org/archive/subject/42>>, accessed 26 September 2016.

AfDB, "Agreement Establishing the African Development Bank", signed on 4 August 1963, available at: <<http://www.afdb.org/fileadmin/uploads/afdb/documents/legal-documents/agreement%20establishing%20the%20adb%20final%202011.pdf>>, accessed 1 April 2016.

AfDB, "Multilateral Financial Institutions Convene in Abidjan for Working Group on Environmental and Social Standards" (7 October 2015a), available at: <<http://www.afdb.org/en/news-and-events/article/multilateral-financial-institutions-convene-in-abidjan-for-working-group-on-environmental-and-social-standards-14786/>>, accessed 28 April 2016.

AfDB, *Regional Integration Policy and Strategy (RIPoS) 2014–2023. Integrating Africa: Creating the Next Global Market* (2015b), available at: <http://www.afdb.org/fileadmin/uploads/afdb/documents/policy-documents/regional_integration_strategy_ripos_2014-2023_approved_-_rev_1_-_11_2014.pdf>, accessed 26 September 2016.

AfDB Group, *Integrated Safeguards System*, available at: <http://www.afdb.org/fileadmin/uploads/afdb/documents/policy-documents/december_2013_-_afdb's_integrated_safe_guards_system_-_policy_statement_and_operational_safeguards.pdf>, accessed 29 April 2016.

- AfDB Group, “Sustainable Energy for All (SE4ALL)”, available at: <<http://www.afdb.org/en/topics-and-sectors/initiatives-partnerships/sustainable-energy-for-all-se4all/>>, accessed 26 September 2016).
- AfDB, ADB, EBRD, European Investment Bank, IADB, World Bank Group, *Joint Statement by the Multilateral Development Banks at Paris, COP21 Delivering Climate Change Action at Scale: Our Commitment to Implementation* (30 November 2015), available at: <http://www.worldbank.org/content/dam/worldbank/document/climate/joint%20mdb%20statement%20climate_nov%2028_final.pdf>, accessed 29 February 2016.
- AfDB, ADB, EBRD, European Investment Bank, IADB, World Bank Group, International Monetary Fund, *From Billions to Trillions: MDB Contributions to Financing For Development* (July 2015), available at: <<http://www.worldbank.org/mdgs/documents/ffd-mdb-contributions-july-13-2015.pdf>>, accessed 29 February 2016.
- Babb, S.L. and B.G. Carruthers, *Conditionality: Forms, Function, and History*, 4 Annual Review of Law and Social Science (2008).
- Barral, V., *Sustainable Development in International Law: Nature and Operation of an Evolutive Legal Norm*, 23 The European Journal of International Law, no. 2 (2012).
- Bekhechi, M.A. and J.R. Mercier, *The Legal and Regulatory Framework for Environmental Assessments: A Study of Selected Countries in Sub-Saharan Africa; Law, Justice and Development Series* (Washington DC: World Bank Group, 2002).
- Boisson De Chazournes, L., “Policy Guidance and Compliance: The World Bank Operational Standards”, in D. Shelton (ed.), *Commitment and Compliance: The Role of Non-Binding Norms in the International Legal System* (Oxford: Oxford University Press, 2000).
- Boisson De Chazournes, L., “The World Bank Inspection Panel: About Public Participation and Dispute Settlement”, in T. Treves, A. Fodella, A. Tanzi and M. Frigessi Di Rattalma (eds.), *Civil Society, International Courts and Compliance Bodies* (The Hague: T.M.C. Asser Press, 2005).
- Boisson De Chazournes, L., “Partnerships, Emulation, and Coordination: Towards the Emergence of a Droit Commun in the Field of Development Finance”, in H. Cissé, D. Bradlow and B. Kingsbury (eds.), *The World Bank Legal Review, Vol. 3: International Financial Institutions and Global Legal Governance* (Washington: World Bank, 2011).
- Boisson De Chazournes, L., “Les Panels d’Inspection”, in Société Française pour le Droit International, *Colloque De Lyon - Droit International Et Développement* (Paris: Editions A. Pedone, 2015).
- Bradlow, D.D., “International Law and the Operations of the International Financial Institutions”, in D.D. Bradlow and D.B. Hunter (eds.), *International Financial Institutions and International Law* (The Netherlands: Kluwer Law International, 2010).
- Bradlow, D.D., *Southern African Governments, Multilateral Development Banks, Non-State Actors, and Sustainable Infrastructure: Managing Changing Relationships*, 22 South African Journal of International Affairs, no. 3 (2015).
- Bradlow, D.D. and M.S. Chapman, *Public Participation and the Private Sector: The Role of Multilateral Development Banks in the Evolution of International Legal Standards*, 4 Erasmus Law Review, no. 2 (2011).
- Bradlow, D.D. and A. Naudé Fourie, *The Operational Policies of the World Bank and the International Finance Corporation: Creating Law-Making and Law-Governed Institutions?*, 10 International Organizations Law Review (2013).
- Broches, A., *International Legal Aspects of the Operations of the World Bank*, 98 Recueil Des Cours (1959).

- Bruhn-Tysk, S. and M. Eklund, *Environmental Impact Assessment – A Tool for Sustainable Development? A Case Study of Biofuelled Energy Plants in Sweden*, 22 Environmental Impact Assessment Review (2002).
- Brundtland, G.H., et al. *Our Common Future: The Report of the World Commission on Environment and Development* (Oxford: Oxford University Press, 1987).
- Buergenthal, T., *The World Bank and Human Rights*, 31 ASIL Studies in Transnational Legal Policy (1999) 95–101.
- Dann, P., *The Law of Development Cooperation, A Comparative Analysis of the World Bank, the EU and Germany* (Cambridge, UK and New York, USA: Cambridge University Press, 2013).
- Dann, P. and M. Riegner, *Managing Social and Environmental Risk in World Bank Development Policy Operations*, Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH, April 2015), available at: <http://dann.rewi.hu-berlin.de/doc/dann_2015_managing_social-environmental-risks-world-bank.pdf>, accessed 15 November 2016.
- Darrow, M., *Between Light and Shadow: The World Bank, the International Monetary Fund and International Human Rights Law* (Portland, Oregon: Hart Publishing, 2003).
- Davies, G., *A History of the Social Development Network in the World Bank, 1973–2002*, Social Development Papers, no. 56 (March 2004).
- De Moerloose, S., *Estándares Ambientales Y Sociales En La Condicionalidad Del Banco Mundial*, 3 Revista De Derecho Ambiental De La Universidad De Palermo, no. 2 (November 2014).
- De Moerloose, S., *The World Bank's Sustainable Development Approach and the Need for a Unified Field of Law and Development Studies in Argentina*, 8 Law and Development Review, no. 2 (December 2015).
- Di Leva, C., “International Environmental Law, the World Bank, and Ifis”, in D. Bradlow and D. Hunter (eds.), *International Financial Institutions and International Law* (The Netherlands: Kluwer Law International, 2010).
- Dupuy, P.-M. and Y. Kerbrat, *Droit International Public* (12th ed., Paris: Précis Dalloz, 2014).
- EBRD, “Agreement Establishing the European Bank for Reconstruction and Development”, signed on 29 May 1990, available at: <<http://www.ebrd.com/news/publications/institutional-documents/basic-documents-of-the-ebrd.html%20>>, accessed 1 April 2016.
- EBRD, *Environmental and Social Exclusion List*, available at: <http://www.ebrd.com/downloads/about/sustainability/environmental_and_social_exclusion_and_referral_lists_15092008.pdf>, accessed 3 May 2016a.
- EBRD, *Environmental and Social Policy*, available at: <<http://www.ebrd.com/downloads/research/policies/esp-final.pdf>>, accessed 3 May 2016b.
- EBRD, “The EBRD’s Energy Strategy: Renewable Energy”, available at: <<http://www.ebrd.com/what-we-do/sectors-and-topics/ebrd-energy-strategy-renewable.html>>, accessed 26 September 2016c.
- Economic Commission for Africa, African Union Commission, African Development Bank, *ClimDev-Africa Special Fund Roundtable Meeting*, 25 April 2012, *Concept Note*, available at: <<http://www.afdb.org/fileadmin/uploads/afdb/documents/generic-documents/concept%20note%20climdev.pdf>>, accessed 26 September 2016.
- Economic Commission for Africa, African Union, African Development Bank Group, United Nations Development Programme, *MDGs to Agenda 2063 /SDGs Transition report 2016: Towards an integrated and coherent approach to sustainable development in Africa* (September 2016), available at: <<http://www.afdb.org/fileadmin/uploads/afdb/docu>

- ments/generic-documents/mdg-sdg_transition_report_eng_fin.pdf>, accessed 26 September 2016.
- European Investment Bank, *European Investment Bank Statement of Environmental and Social Principles and Standards*, 2009, available at: <http://www.eib.org/attachments/strategies/eib_statement_esps_en.pdf>, accessed 1 July 2016.
- European Investment Bank Complaints Mechanism, *Conclusions Report, Olkaria I and IV Kenya*, Complaint SG/E/2014/07-08 (11 November 2015), available at: <<http://ewebapps.worldbank.org/apps/ip/panelcases/97-inspection%20panel%20investigation%20report.pdf>>, accessed 12 July 2016.
- Fievet, G., *Réflexions Sur Le Concept De Développement Durable: Prétention Économique, Principes Stratégiques Et Protection Des Droits Fondamentaux*, 1 Revue Belge De Droit International (2001).
- First High-Level Forum on Aid Effectiveness, *Rome Declaration on Harmonization* (February 2003), available at: <<http://www.oecd.org/dac/effectiveness/31451637.pdf>>, accessed 26 April 2016.
- Handl, G., *The Legal Mandate of Multilateral Development Banks as Agents for Change toward Sustainable Development*, 92 The American Journal of International Law, no. 4 (October 1998).
- Head, J.W., *Environmental Conditionality in the Operations of International Development Finance Institutions*, 1 The Kansas Journal of Law and Public Policy (1991).
- Heads of the AfDB, the ADB, the EBRD, the European Investment Bank, the IADB, the World Bank Group and the International Monetary Fund, *From Billions to Trillions – Transforming Development, Finance Post-2015 Financing For Development: Multilateral Development Finance* (16 April 2015), available at: <<http://www.worldbank.org/en/news/press-release/2015/04/16/joint-statement-mdb-imf-head-financing-for-development>>, accessed 29 February 2016.
- Hernandez, D., *Are “New” Donors Challenging World Bank Conditionality*, AidData Working Paper, no. 19 (January 2016).
- Hernández Uriz, G., *To Lend or Not to Lend: Oil, Human Rights, and the World Bank’s Internal Contradictions*, 14 Harvard Human Rights Journal (2001).
- Himberg, H., *Comparative Review of Multilateral Development Bank Safeguard Systems, Main Report and Annexes* (May 2015), available at: <https://consultations.worldbank.org/data/hub/files/consultation-template/review-and-update-world-bank-safeguard-policies/en/phases/mdb_safeguard_comparison_main_report_and_annexes_may_2015.pdf>, accessed 14 April 2016.
- Humphrey, C., *Time for a New Approach to Environmental and Social Protection at Multilateral Development Banks*, ODI Shaping Policy for Development (April 2016), available at: <<https://www.odi.org/sites/odi.org.uk/files/resource-documents/10419.pdf>>, accessed 12 May 2016.
- Hunter, D.B., *Civil Society Network and the Development of Environmental Standards*, 8 Chicago Journal of International Law, no. 2 (Winter 2008).
- Huyser, K., *Note Sustainable Development: Rhetoric and Reform at the World Bank*, 4 Transnational Law and Contemporary Problems (1994).
- IADB, “Agreement Establishing the Inter-American Development Bank”, as amended through 31 July 1995, available at: <<http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=781584>>, accessed 1 April 2016.

- IADB, *The Inter-American Development Bank, Blue Ribbon Panel on the Environment, Final Report of Recommendations* (23 February 2005), available at: <<https://publications.iadb.org/bitstream/handle/11319/5443/blue%20ribbon%20panel%20on%20the%20environment%3a%20%20final%20report%20of%20recommendations.pdf?sequence=1>>, accessed 3 October 2016.
- IADB, *Update to Institutional Strategy 2010–2020, Partnering with Latin America and the Caribbean to Improve Lives* (March 2015), available at: <<http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=39556684>>, accessed 26 September 2016.
- IADB, *Inter-American Bank Sustainability Review 2005*, available at: <<https://publications.iadb.org/handle/11319/2344>>, accessed 3 May 2016a.
- IADB, *List of Excluded Activities for Non-Sovereign-Guaranteed (NSG) Operations*, available at: <<http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=1904138>>, accessed 3 May 2016b.
- IADB, *Operational Policies*, available at: <<http://www.iadb.org/en/mici/relevant-operational-policies,8166.html>>, accessed 3 May 2016c.
- IADB, *Operational Policy on Indigenous Peoples*, footnote 10, available at: <<http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=39430632>>, accessed 3 May 2016d.
- IBRD, “Articles of Agreement”, as amended effective 27 June 2012, available at: <http://siteresources.worldbank.org/bodint/resources/278027-1215526322295/ibrdarticlesofagreement_english.pdf>, accessed 1 April 2016.
- IDA, “IDA Articles of Agreement”, available at: <<https://www.worldbank.org/ida/articles-agreement/ida-articles-of-agreement.pdf>>, accessed 15 May 2016.
- IFC, “Articles of Agreement” as amended through 27 June 2012, available at: <http://www.ifc.org/wps/wcm/connect/corp_ext_content/ifc_external_corporate_site/about+ifc_new/ifc+governance/articles>, accessed 1 April 2016.
- IFC, *Performance Standards on Environmental and Social Sustainability*, available at: <http://www.ifc.org/wps/wcm/connect/115482804a0255db96fbffda5d13d27/ps_english_2012_full-document.pdf?mod=ajperes>, accessed 3 May 2016.
- Igoe, M., “World Bank Chief Defends New Safeguards”, *Devex*, 5 August 2016, available at: <<https://www.devex.com/news/world-bank-chief-defends-new-safeguards-88545>>, accessed 15 November 2016.
- International Labour Organization, *C169 – Indigenous and Tribal Peoples Convention*, 76th ILC session (27 June 1989).
- International Labour Organization, *ILO Declaration on Fundamental Principles and Rights at Work*, 86th ILC session (18 June 1998).
- Kapur, D., *Do as I Say Not as I Do: A Critique of G-7 Proposals on Reforming the Multilateral Development Banks*, G-24 Discussion Paper Series, no. 20 (February 2003).
- Kingsbury, B., “Operational Policies of International Institutions as Part of the Law-Making Process: The World Bank and Indigenous Peoples,” in G.S. Goodwin-Gill and S. Talmon (eds.), *The Reality of International Law: Essays in Honour of Ian Brownlie* (Oxford: Clarendon Press, 1999).
- Latin American and Caribbean Commission on Development and Environment, the Inter-American Development Bank and UNEP, *Our Own Agenda*, 1990, cited in IADB, *The Inter-American Development Bank, Blue Ribbon Panel on the Environment, Final Report of Recommendations* (23 February 2005), available at: <<https://publications.iadb.org/bitstream/handle/11319/5443/blue%20ribbon%20panel%20on%20the%20environment%3a>

- %20%20final%20report%20of%20recommendations.pdf?sequence=1> , accessed 3 October 2016.
- Lee, Y.-S., *General Theory of Law and Development*, 50 Cornell International Law Journal, no. 3 (forthcoming December 2017), 13–14, available at: <<https://ssrn.com/abstract=2951317>> , accessed 12 April 2017.
- Leva, D., *International Environmental Law and Development*, 10 The Georgetown International Environmental Law Review (1997–1998).
- Macekura, S.J., *Of Limits and Growth: The Rise of Global Sustainable Development in the Twentieth Century* (New York: Cambridge University Press, 2015).
- Mbengue, M.M. and S. De Moerloose, *Quasi-judicial dialogue: Kenya Electricity Expansion Project before the World Bank and the European Investment Bank's international accountability mechanisms*, EJIL: Talk! - Blog of the European Journal of International Law (9.11.2016), available at: <<http://www.ejiltalk.org/quasi-judicial-dialogue-for-the-coherent-development-of-international-law/#more-14715>> , accessed 12 April 2017.
- Mbengue, M.M. and S. Waltman, *Farmland Investments and Water Rights: The Legal Regimes at Stake*, The International Institute for Sustainable Development (May 2015), available at: <<http://www.iisd.org/sites/default/files/publications/farmland-investments-water-rights-legal-regimes-at-stake.pdf>> , accessed 13 May 2016.
- McInerney-Lankford, S., “International Financial Institutions and Human Rights: Select Perspectives on Legal Obligations”, in D. Bradlow and D. Hunter (eds.), *International Financial Institutions and International Law* (The Netherlands: Kluwer Law International, 2010).
- McNamara, R.S., *Address to the United Nations Conference on the Human Environment (Stockholm, 8 June 1972)*, available at: <<http://documents.worldbank.org/curated/en/123671468154768455/pdf/557860wp0box360y0robert0s-0mcnamara.pdf>> , accessed 14 November 2016.
- Morgera, E., *Significant Trends in Corporate Environmental Accountability: The New Performance Standards of the International Finance Corporation*, 18 Colorado Journal of Environmental Law and Policy (2007).
- Mourant, A., D. Emeott, J. Ningthoujam and J. Yu, *Ensuring Sustainability in the Asian Infrastructure Investment Bank and the New Development Bank*, A SAIS International Development Practicum Report, John Hopkins School of Advanced International Studies (2015), available at: <<http://www.sais-jhu.edu/sites/default/files/sais-wri-practicum-may2015.pdf>> , accessed 13 May 2016.
- Multilateral Financial Institutions Working Group on Environment, *A Common Framework for Environmental Assessment: A Good Practice Note* (28 February 2005).
- Naudé Fourie, A., *The World Bank Inspection Panel and Quasi-Judicial Oversight, in Search of the “Judicial Spirit” in Public International Law* (Utrecht: Eleven International Publishing, 2009).
- Ninio, A., “Postscript and Update”, in D. Freestone (ed.), *Legal Aspects of Sustainable Development: The World Bank and Sustainable Development: Legal Essays* (The Netherlands: Martinus Nijhoff Publishers, 2012).
- Park, S., *Norm Diffusion within International Organizations: A Case Study of the World Bank*, 8 Journal of International Relations and Development, no. 2 (2005).
- Sands, P., J. Peel, A. Fabra and R. Mackenzie, *Principles of International Environmental Law* (3rd ed., Cambridge: Cambridge University Press, 2012).

- Second High-Level Forum on Aid Effectiveness, *Paris Declaration on Aid Effectiveness*, March 2005, available at: <<http://www.oecd.org/dac/effectiveness/34428351.pdf>>, accessed 26 April 2017.
- Shihata, I.F.I., *The World Bank and Human Rights: An Analysis of the Legal Issues and the Record of Achievements*, 17 *Denver Journal of International Law and Policy*, no. 39 (1988–1989).
- Shihata, I.F.I., *Human Rights, Development, and International Financial Institutions*, 8 *American University International Law Review*, no. 1 (1992a).
- Shihata, I.F.I., *The World Bank and the Environment: A Legal Perspective*, 16 *Maryland Journal of International Law*, no. 1 (1992b).
- Stephens, P., “Risk Mismanagement? IFC Runs into Trouble in Honduras”, *Devex Newswire* (15 January 2014), available at: <<https://www.devex.com/news/risk-mismanagement-ifc-runs-into-trouble-in-honduras-82656>>, accessed 27 June 2016.
- Svensson, J., *When Is Foreign Aid Policy Credible? Aid Dependence and Conditionality*, 61 *Journal of Development Economics*, no. 1 (2000).
- Tamanaha, B.Z., *The Primacy of Society and the Failures of Law and Development*, 44 *Cornell International Law Journal*, no. 2 (2011).
- The Independent Evaluation Group, *Safeguards and Sustainability Policies in a Changing World. an Independent Evaluation of the World Bank Group Experience* (Washington DC: The World Bank, 2010), available at: <<https://publications.iadb.org/handle/11319/2344>>, accessed 3 May 2016.
- The World Bank Inspection Panel, “About Us”, available at: <<http://ewebapps.worldbank.org/apps/ip/pages/aboutus.aspx>>, accessed 14 November 2016.
- Third High-Level Forum on Aid Effectiveness, *Accra Agenda for Action*, available at: <<http://www.oecd.org/dac/effectiveness/34428351.pdf>>, accessed 26 April 2016.
- Third International Conference on Financing for Development, *Addis Ababa Action Agenda*, UN Doc. A/RES/69/313 (27 July 2015).
- Tomaševski, K., *The Influence of the World Bank and the IMF on Economic and Social Rights*, 64 *Nordic Journal of International Law* (1995).
- Treacle, K., J. Fox and D. Clark, “Lessons Learned”, in D. Clark, J. Fox and K. Treacle (eds.), *Demanding Accountability: Civil-Society Claims and the World Bank Inspection Panel* (Lanham: Rowman and Littlefield, 2003).
- United Nations, *Institutional Arrangements to Follow Up the United Nations Conference on Environment and Development*, A/RES/47/191 (22 December 1992).
- United Nations, *Agenda for Development*, A/RES/51/240 (15 October 1997a).
- United Nations, *Programme for the Further Implementation of Agenda 21*, G/RES/S-19/2 (28 June 1997b).
- United Nations, *Convention on The Rights of Persons with Disabilities*, UN Doc. A/RES/61/611 (6 December 2006).
- United Nations *United Nations Declaration on the Rights of Indigenous Peoples*, UN Doc. A/RES/61/295 (13 September 2007).
- United Nations, *Transforming our world: The 2030 Agenda for Sustainable Development*, A/RES/70/1 (25 September 2015).
- United Nations Conference on Environment and Development, *Rio Declaration on Environment and Development*, UN Doc. A/CONF.151 /26 (Rio de Janeiro, 1992).

- United Nations Conference on Sustainable Development, *The Future We Want, Report of the United Nations Conference on Sustainable Development*, UN Doc. A/CONF.216/16 (Rio de Janeiro, 2012).
- United States Treasury, *United States Comments on World Bank Safeguards Review*, available at: <<https://www.treasury.gov/resource-center/international/development-banks/documents/united%20states%20comments%20on%20wb%20safeguards%20review.pdf>>, accessed 29 April 2016.
- Viñuales, J.E., “The Rio Declaration: A Preliminary Study”, in J.E. Viñuales (ed.), *The Rio Declaration on Environment and Development, a Commentary* (Oxford: Oxford University Press, 2015).
- Vives, A., *The Role of Multilateral Development Institutions in Fostering Corporate Social Responsibility*, 47 *Development*, no. 3 (2004).
- Von Bernstorff, J. and P. Dann, *Reforming the World Bank’s Safeguards. A Comparative Legal Analysis* (Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH, July 2013), available at: <https://www.jura.uni-tuebingen.de/professoren_und_dozenten/vonbernstorff/projekte/worldbankssafeguardsacomparativelegalanalysis.pdf>, accessed 4 May 2016.
- Wade, R., “Greening the Bank: The Struggle over the Environment, 1970–1995”, in D. Kapur, J.P. Lewis and R. Webb (eds.), *The World Bank: Its First Half Century, Volume 2: Perspectives* (Washington D.C.: Brookings Institution Press, 1997).
- Webb, P., *International Judicial Integration and Fragmentation* (Oxford: Oxford University Press, 2013).
- Woods, N., *Whose Aid? Whose Influence? China, Emerging Donors and the Silent Revolution in Development Assistance*, 84 *International Affairs* (Royal Institute of International Affairs 1994-), no. 6 (November 2008).
- World Bank, *World Development Report 1992: Development and the Environment* (New York: The World Bank and Oxford University Press, 1992).
- World Bank, *World Development Report 2003: Sustainable Development in a Dynamic World, Transforming Institutions, Growth, and Quality of Life* (New York: The World Bank and Oxford University Press, 2003).
- World Bank, “International Conference on Sustainable Development through Quality Infrastructure Investment” (20–21 January 2016a), available at: <<http://www.worldbank.org/en/events/2016/01/20/international-conference-on-sustainable-development-through-quality-infrastructure>>, accessed 26 September 2016.
- World Bank, *The World Bank’s Safeguard Policies Proposed Review and Update Approach Paper* (10 October 2102), available at: <<https://consultations.worldbank.org/Data/hub/files/consultation-template/review-and-update-world-bank-safeguard-policies/en/phases/safeguardsreviewapproachpaper.pdf>>, accessed 7 April 2017.
- World Bank, *Environment matters at the World Bank: Rio + 20* (2012), available at: <<http://documents.worldbank.org/curated/en/700911468340164800/pdf/715960wp0box370matters000whole0book.pdf>>, accessed 14 November 2016b.
- World Bank, *Environmentally Sustainable Development Vice Presidency*, available at: <<https://archivesholdings.worldbank.org/environmentally-sustainable-development-vice-presidency>>, accessed 14 November 2016c.
- World Bank, *Operations Manual – Operations Policies (OP)*, available at: <<http://web.worldbank.org/wbsite/external/projects/extpolicies/extopmanual/0,,menuupk:4564185~pagepk:64719906~pipk:64710996~thesitepk:502184,00.html>>, accessed 29 April 2016d.

World Bank, *Review and Update of the World Bank's Safeguards Policies, Environmental and Social Safeguards (proposed Third Draft)* (4 August 2016), available at: <https://consultations.worldbank.org/Data/hub/files/consultation-template/review-and-update-world-bank-safeguard-policies/en/materials/board_paper_for_es_framework_third_draft_for_disclosure_august_4_2016.pdf>, accessed 4 April 2017a.

World Bank, "Sustainable Development: Overview; Context", available at: <<http://www.worldbank.org/en/topic/sustainabledevelopment/overview>>, accessed 17 April 2017b.

World Bank, *The World Bank Group Goals: End Extreme Poverty and Promote Shared Prosperity*, available at: <<https://openknowledge.worldbank.org/bitstream/handle/10986/20138/899250wp0box380public00wb0goals2013.pdf?sequence=1&isallowed=y>>, accessed 17 April 2017c.