“Development” Versus “Sustainable Development”?: (Re-) Constructing the International Bank for Sustainable Development

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ABSTRACT

This Article scrutinizes the potential contribution of the World Bank, as an international economic organization, to the sustainable development agenda. Analyzing the reforms in policies, procedures, and organizational structure that accompanied the Bank’s involvement in ostensibly political, non-economic matters such as human rights, environmental protection, and good governance—all of which are critical components of sustainable development—this Article contends that, contrary to the so-called mission creep argument, the evolution of the Bank’s mandate is legally defensible and normatively desirable. Instead of amending its constituent instrument, the Bank has optimized the teleological-evolutionary approach to treaty interpretation to expand and reconstruct its mandate in response to the changing needs of its clients. However, to complete its credible transformation into a “sustainable development agency,” the interpretation of its Articles of Agreement should be guided not only by the treaty parties’ intent but also by the international community’s expectations and demands. The international community’s consensus on the multidimensional character of sustainable development and the related principle of integration must be read into the Bank’s constituent instrument and must guide its development policies and operational activities.

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“Sustainable development is about - if it is about anything - ensuring that legitimate human needs are met without sacrificing environmental resources in the process. If one is to believe that States have “adopted” sustainable development as the way forward, this needs to be reflected in what goes on within international organisations of which they are a part. International organisations must be active, not passive, players in global developments reflecting the interests of their members.”

“A word is not a crystal, transparent and unchanged, it is the skin of a living thought and may vary greatly in color and content according to the circumstances and the time in which it is used.”

I. INTRODUCTION

“Keynes would be rolling over in his grave were he to see what has happened to his child.” Referring to the detrimental effects resulting from the structural adjustment programs that the International Monetary Fund (IMF; the Fund), together with the International Bank for Reconstruction and Development (IBRD; the Bank; the World Bank), supported in the eighties and nineties, former World Bank Chief Economist Joseph Stiglitz made this remark to criticize the so-called mission creep in the Fund, which has come to champion “market supremacy with ideological fervor” in spite of its being supposedly “[f]ounded on the belief that markets often worked badly.”

In a slightly similar vein, this Article begins with the observation that the World Bank of today, whose avowed mission is to “end extreme poverty within a generation and boost shared prosperity,” would be somewhat unrecognizable to participants at the Bretton Woods Conference as the same institution they created in 1944.

4. Here, the terms “IBRD”; the “Bank”; and the “World Bank” will be used interchangeably, although the convention in the literature is to collectively refer to the IBRD and the International Development Association (IDA) as the World Bank. It is also recognized that the so-called “World Bank Group” is actually comprised of five discrete international organizations, namely, the IBRD; the IDA; the International Finance Corporation (IFC); the Multilateral Investment Guarantee Agency (MIGA); and the International Centre for Settlement of Investment Disputes (ICSID).
5. STIGLITZ, supra note 3, at 12.
In contrast to Stiglitz, however, this Article contends that the mission reconstruction7 in the Bank—meaning, the expansion and modification of its operational scope and organizational structure—is legally sound and normatively desirable, and should be maintained, if not enhanced and accelerated, to transform the World Bank into a sustainable development agency. In this regard, the policy proliferation associated with the Bank’s assumption of new activities, particularly those that are non-economic in character, is sometimes referred to as “mission creep.”8 Contrary to the negative connotations underlying such a term, this Article views this set of changes to be mostly a benign fact. Thus, beyond expressing a policy preference as to the Bank’s reform, this Article also presents a legal justification for the proposed transformation based on the World Bank’s constitutive treaty, the Articles of Agreement.

This Article’s title alludes to a potential contrast between the World Bank’s traditionally one-dimensional (economic) understanding of development qua economic growth and the multidimensional and integrative thrust of the concept of sustainable development, which is broadly acknowledged in several international instruments to encompass three aspects, namely, economic, social, and environmental.9 This Article posits that the Bank’s evolving definition of “development” has been moving closer, albeit at a gradual pace, to the meaning of “sustainable development” as understood and supported by the international community.

To corroborate this claim, this Article presents a narrative and legal analysis of how an international financial institution (IFI) or international economic organization (IEO) such as the World Bank has been transforming into a nascent sustainable development agency. Such transformation occurs through the interpretation of this organization’s Articles of Agreement—considered under international

7. As will become apparent, I take a more positive view of the evolution in the Bank’s mandate; hence, I refrain from using the derogatory term ‘mission creep’ to describe this process and instead use a fairly neutral term ‘mission reconstruction.’


law as both a treaty and a constitution—using the general rule and methods under the Vienna Convention on the Law of Treaties (1969) (VCLT; Vienna Convention), albeit with some additions or modifications. To complement the suggested interpretation of the IBRD Articles, the analysis includes legal opinions and memoranda by the Bank’s General Counsel, as well as related scholarly works, that address the increasing involvement of the IBRD and the International Development Association (IDA) in development projects and programs concerning the environment, (good) governance, and human rights.

The Article proceeds as follows. Part II, which follows the Introduction, briefly looks at the Bank’s present policies and operations pertaining to development. Taking into account the IBRD’s institutional history, this Part contextualizes the mission creep argument in its various forms. Its history suggests that the World Bank has in fact struggled and failed, but eventually succeeded, to reconstruct its mandate and adapt to the constantly changing needs and demands of peoples within its different member states, particularly those belonging to the developing world, which have become the major clients of the Bank.

Part III traces the contemporaneous evolution of the concept of sustainable development within different international fora. It focuses on the concept’s tridimensional character and the concomitant thrust to integrate the economic, social, and environmental aspects of development. As illustrated in the references to sustainability in various World Bank documents, the discussion also alludes to the points of intersection between the Bank’s evolving definition of “development” and the international community’s emerging understanding of “sustainable development.” In most instances, it appears that the Bank is more wary or mindful of the interaction between the economic and environmental pillars, thereby seemingly overlooking the social pillar. This observation might be attributed to the greater number of cases wherein people affected by the Bank’s


11. Technically speaking, the term ‘World Bank’ refers to the IBRD and the IDA collectively. The IDA was established in 1960 to complement the “original lending arm,” i.e., the IBRD, by extending zero- or very low-interest loans (called “credits”) to developing and least developed countries. See generally International Development Association: The World Bank’s Fund for the Poorest, WORLD BANK GROUP (Feb. 2016), http://ida.worldbank.org/sites/default/files/images/fund-for-the-poorest.pdf (archived Jan. 20, 2018).

12. The term “concept” is consistent with the International Court of Justice’s (ICJ) usage in the Case Concerning the Gabčíkovo-Náagymaros Project (Hung./Slovk.), infra Part III.B.
development projects raise environment-related concerns, or frame the harms they incurred from development projects in environmental terms.13

Moreover, Part III seeks to establish the crucial claim that the concept of sustainable development, including the principle of integration, has been incorporated into the shared expectations of the international community, such that even given the current lack of concrete international legal rules to govern the sustainable development agenda, there exists some basic consensus among participants in the international lawmaking process regarding the concept, including its goals, implications, and some underlying principles. This assertion is essential to the interpretive framework proposed in Part V, insofar as the expectations and demands of the international community need to be analyzed vis-à-vis the intent of the States parties to the Bank’s constitutive treaty.

Based on an interpretation of the Articles of Agreement, Part IV puts forward a legal defense for the mission reconstruction in the Bank. It submits that the Bank’s current sustainability-oriented policies and operational activities are consistent with its developmental mandate and purposes. Likewise, these policies and activities do not constitute violations of the constitutional provisions prohibiting interference in its member states’ political affairs and enjoining decisions to be made solely on the basis of economic considerations. However, although the ascertained intention of the founding members supports an evolutionary interpretation of the Articles, it is unclear how or in what manner they intended the definitions of the generic terms in the treaty—e.g., “development,” “political,” or “economic”—to evolve over time.

Hence, the teleological-evolutionary approach needs to be guided and counterbalanced by international community expectations and demands, which, as shown in Part III, are geared towards the achievement of sustainable development. The historically unique and special standing of the Bank in the world order—derived from its financial capacity; accumulated practical experience and knowledge; and political clout—causes members and participants in the international community to continue looking to the Bank for solutions to sustainability-related problems.14 As Gavin and Rodrik aptly state,
“Where the Bank’s strength lies is in its tremendous powers to spread and popularize ideas that it latches on to. Once the Bank gets hold of an idea, its financial clout ensures that the idea will gain wide currency.”

Part V elaborates the recommendation to complement the current interpretive framework with the approach in international law pioneered by Myres McDougal and his colleagues at Yale, in order for the process of reconstructing the World Bank as a sustainable development agency to be more systematic, focused, and relevant. The proposal entails two steps: first, ascertaining both the shared expectations of the treaty parties and the contemporary expectations and demands of the international community; and second, analyzing and harmonizing the two. In the event of an irreconcilable conflict, the latter prevails.

The Article concludes that, without need of amending its constitutive treaty, the Bank’s incremental efforts to align its development policies and operations with the broader concept of sustainable development have been fairly successful. Given the far-reaching impact of these positive changes to the lives of people affected by development projects, it is important to get a comprehensive understanding of the trends in the Bank’s decisions and the circumstances under which such decisions were made and remade, in order to judiciously predict future trends in decision. More critically, the significance of the kind of analysis that this Article undertakes lies in arriving at reasoned invention and evaluation of policy alternatives to move closer to the optimum world public order. This Article contributes to facilitating the transformation of the World Bank from an international economic organization into the envisioned sustainable development agency—by offering legal and policy justifications for the Bank’s involvement not only in the economic dimension of development but in the social and environmental dimensions as well.

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free from criticism, a strong case remains for its refocusing on new development issues such as women’s rights, labor standards, health and safety issues, and environmental protection).

II. THE WORLD BANK: FROM INTERNATIONAL FINANCIAL INSTITUTION TO DEVELOPMENT BANK TO SUSTAINABLE DEVELOPMENT AGENCY

A. Early Shift from Reconstruction to Development

The period of interaction between the IBRD and its initially intended beneficiaries, i.e., the developed countries devastated by World War II, had been remarkably brief, having been cut short by the promulgation of the Marshall Plan. The Bank has been repeatedly criticized for being ill-equipped to perform the developmental aspect of its mandate—a criticism that persists to this day—because only the reconstruction part (and its relationship to peace and security) became subject to careful study and deliberation. Furthermore, “[a]lthough the [Bretton Woods] conference’s objectives formally mentioned ‘development,’ relatively little time was devoted to discussing the plight of developing countries,” and the discussion “focused on promoting currency stability, devising a system of international payments, and organizing the economic reconstruction of Europe.”

Still, the architects of the postwar international economic system were not entirely oblivious to the fact that the created international organizations (IO) would necessarily have both social and political impacts. This consciousness is demonstrated by the aborted attempt to create the International Trade Organization (ITO), a third institution to complete the envisioned three-pillar architecture of the

17. See Morais, supra note 8, at 6 (“The original ideology inscribed in the Articles was to open up developing countries to foreign investment that would primarily benefit the developed countries and only secondarily promote development in the Third World.”).
international economic order. The ITO was intended to be “a remarkable organization that pioneered the idea of an integrated trade and employment” whose story offered “an unparalleled case study of a short period in history when free trade, labour standards and human development were friends and not historical antagonists.”

This tense interrelationship among economic, political, and social pursuits is also the theme of the World Bank’s evolution.

Indeed, to ensure its continued relevance after the war and the Western European States’ recovery, the World Bank had to shift its focus from reconstruction to development and step up to a mandate of poverty reduction, which was (and still is) the urgent international concern following the decolonization of states presently belonging to the developing world. These changed circumstances made it necessary to extend non-commercial or concessional loans (“soft loans”) to newly independent but poor countries, and impelled the creation of the IDA.

As the focus shifted to “addressing developmental questions from a planning perspective” and “[n]ew procedures were introduced to study developing countries,” Philipp Dann aptly observes that “the Bank for Reconstruction of Western Europe had gradually transformed itself into the World Bank as a development bank.”

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24. See Mason and Asher, supra note 19, at 72–87 (tracing the Bank’s organisational evolution—from a bank to a development-financing agency—and explaining the rationale for creating its affiliates, namely, the IDA and the IFC); Hockett, Three (Potential) Pillars, supra note 22, at 111–12 (stating that similar to the IMF, the World Bank’s mission has evolved “in the direction of greater compensation to the world’s poor (or at least those who do not inhabit aggregately wealthy nation-states).”).


However, the introduction of the World Bank to the “Third World,”27 i.e., the newly independent states (also referred to in the literature as the developing and least-developed28 or middle- and low-income countries) was riddled with challenges. The Bank’s “one-size-fits-all” solutions proved ineffective for the diverse development problems of the former colonies, because the latter’s distinct socioeconomic and political institutions were ignored.29 This incompatibility became most manifest and acutely felt by the people in those developing countries, through ill-conceived policy advice and badly managed and implemented projects and programs.30

27. See id. at 26 (posing an emancipatory meaning behind the notion of the “Third World,” instead of a reference to the traditional “stages of growth” development model).


disastrous and adverse impacts predominantly revolved around indigenous peoples’ rights, forced or involuntary resettlement, and environmental degradation.31 These are issues that required sensitivity to the developing countries’ distinct and diverse political, economic, social, and cultural institutions, which affect their development prospects and strategies.32 The IFIs, however, did not sufficiently understand and account for these nuances in prescribing template development projects that paid no mind to country ownership and to the distinct situations of the people who were supposed to benefit from the projects.33

30, 2018) (explaining that in varying scopes/subjects of inquiry and degrees of factual detail, these works illustrate the human rights violations, environmental degradation, and breakdown of social and political institutions (e.g., government corruption) allegedly resulting from Bank-supported policies and development projects).


33. See DANIEL CABELLO, FILKA SEKULOVA & DOUWE SCHMIDT, WORLD BANK & CONDITIONALITIES: POOR DEAL FOR POOR COUNTRIES 11–13 (Joshua Craze, ed., 2008), http://www.aseed.net/pdfs/ASEEDE_Report_on_Worldbank_Conditionalities.pdf (last visited Oct. 24, 2017) [https://perma.cc/389D-AWN3] (archived Jan. 20, 2018) (“While the Bank argues that adjustment lending is a history, the set of conditions that it promotes has not changed, nor the one-size-fits-all approach in designing countries’ poverty reduction programs. Agreement is growing that the Bank economic policy conditions are inappropriate, undemocratic and ineffective, and that aid is more effective when borrowing countries exercise genuine and effective leadership over their development policies and strategies.”); Ryan Schlief, What Development Is and What It Could Be, MEDIUM (May 9, 2015), https://medium.com/@accountability/what-development-is-and-what-it-could-be-ddf47ea0608 (last visited Oct. 24, 2017).
Consequently, there was a growth in interest about the Bank’s work and a concomitant increase in demands for its reform. In response to these external and internal demands, the Bank implemented certain sustainability-oriented policy and organizational changes: (i) formulation of environmental and social policies (also, safeguard policies)\(^{34}\) that were incorporated into the institution’s operational policies and procedures;\(^{35}\) and (ii) creation of the World Bank Inspection Panel,\(^{36}\) an accountability mechanism\(^{37}\) mandated to receive complaints from project-affected people claiming to have been harmed or under threat of being harmed as a result of the Bank’s noncompliance with its own operational policies and procedures.

Having acknowledged that the problems of the developing world comprise a distinct interrelationship among economic, political, and socio-cultural factors, the Bank, through its then president, James Wolfensohn, introduced the landmark Comprehensive Development Framework (CDF) in 1999.\(^ {38}\) This new approach to development
entailed a change in mindset, both within the Bank and within the developing countries themselves. According to a former World Bank Chief Economist, the CDF “contrasts with the dominant paradigm of the past half-century, which focused more narrowly on certain economic, or even more narrowly, allocative issues.”

B. “Sustainable Development” in World Bank Documents

For a substantial part of its existence, and up until it reached its fiftieth anniversary, the World Bank appears to have been quite obstinate and consistent in portraying itself as an international financial institution and emphasizing its economic and apolitical character. However, this apolitical characterization does not mean that the Bank has been completely immune from external criticisms about its policy prescriptions and from research agenda advances in the academy. Specifically by the economics discipline. The technical, professional background of the persons comprising the Bank and holding operational and decision-making roles therein

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41. See generally the works in these volumes: DANAHER, supra note 30; FRANCES STEWART, ADJUSTMENT AND POVERTY: OPTIONS AND CHOICES (1995) (attribute to the World Bank’s inappropriae policies and projects the failures of various economies and the concomitant poverty and human suffering); see also LEWIS, supra note 37 at 4–5 (contextualizing the emergence of the independent accountability mechanisms as the Bank’s counter-response to the criticisms).


43. See Gavin & Rodrik, supra note 15, at 332–33 (one profession, i.e., the economist, has historically dominated the Bank, although this trend has also been changing recently); Galit A. Sarfaty, Why Culture Matters in International Institutions: The Marginality of Human Rights at the World Bank, 103 AM. J. INT’L L. 647 (2009).
influences how the organization understands, applies, and modifies certain concepts, especially one such as sustainable development that is multidisciplinary in character.44

Indeed, in the years leading up to the 1992 Rio Conference, there had been subtle shifts in the Bank’s language such that it had begun using the adjective “sustainable” to qualify “economic growth.” For instance, in 1989, the IBRD published a study subtitled, “From Crisis to Sustainable Growth,” which related sustainability to environmental protection:

For those targets to be achieved over the long term, the growth strategy must be both sustainable and equitable—sustainable because sound environmental policies can protect the productive capacity of Africa’s natural resources and equitable because long-term political stability is impossible without this. Equitable means, in particular, that measures are taken to reduce poverty, especially by improving the access of the poor to productive assets.45

Another term that has been employed is “green growth,” which is tautologically defined as “economic growth that is environmentally sustainable” and “growth that is . . . efficient in its use of natural resources, clean in that it minimizes pollution and environmental impacts, and resilient in that it accounts for natural hazards and the role of environmental management and natural capital in preventing physical disasters.”46

In addition to the environmental issues, the Bank readily linked its involvement in sustainable development to poverty alleviation and eradication. The earlier-mentioned Comprehensive Development Framework recognized that this issue of poverty was not only economic but social in character as well.47 It thus called upon the

44. MASON & ASHER, supra note 19, at 457–58; GALIT A. SARFATY, VALUES IN TRANSLATION: HUMAN RIGHTS AND THE CULTURE OF THE WORLD BANK 133–34 (2012) (explaining that while the general development thinking results from both the Bank’s development policies and the wider development community’s ideas, the Bank’s “brain trust” has a greater impact. Sarfaty highlights how the different professional backgrounds (e.g. lawyers versus economists) of the Bank’s officials and employees affect their willingness to acknowledge the relevance of human rights in development projects and decisions); William Ascher, New Development Approaches and the Adaptability of International Agencies: The Case of the World Bank, 37 INT’L ORG. 415, 424 (1983).


Bank to place “more emphasis on the structural and social aspects of development, not only because this is part of the Bank’s original task... but also [because these aspects of development contribute] the most to making development sustainable in the long run.”

Ibrahim Shihata summarized the CDF in this wise:

**Poverty alleviation and sustainable development are built on two intrinsically linked pillars:** sound macroeconomics and finances on the one hand and a sound structural and social framework on the other. Based on this assumption, the CDF report argues that the Bank has in the past considered the macroeconomic and financial aspects of development rather apart from the structural, social, and human aspects while integration of all aspects is imperative.

While a notion of sustainable development gradually infiltrated the growth-addicted economics profession, much of the literature has remained focused on “environmentally sustainable development,” thereby neglecting the social (human) dimensions of sustainability. This omission was partly addressed through the formulation of the *human development* paradigm, which resulted from the distinct but combined efforts of economists—the “basic needs” approach of Mahbub ul Haq and Paul Streeten and Amartya Sen’s “capabilities” approach—to shift the focus of development discourse “from incomes to outcomes and from per capita income growth to improved quality-

“physical security, environmental sustainability, and the ability of poor people to confront their future with confidence”).


49. Id. at 239 (emphasis added).

50. See Daniel Barstow Magraw & Lisa D. Hawke, *Sustainable Development*, in *THE OXFORD HANDBOOK OF INTERNATIONAL ENVIRONMENTAL LAW* 614–38 (Daniel Bodansky, Jutta Brunnée & Ellen Hey eds., 2008) (“Our sense is that many economists are intellectually addicted to growth and that economic theory needs to take into account the crucial roles that environmental services perform and the effects that economic growth can have on the biosphere’s ability to continue to provide these services.”).


of-life outcomes.” Once the United Nations Development Programme (UNDP) adopted the Human Development Index (HDI), the World Bank likewise publicly acknowledged the occurrence of an evolution of approaches to development and affirmed that growth and development are correlated but not identical, thus:

Economists have traditionally considered an increase in per capita income to be a good proxy for other attributes of development. But the weakness of income growth as an indicator is that it may mask the real changes in welfare for large parts of the poor population. Improvements in meeting the basic needs for food, education, health care, equality of opportunity, civil liberties, and environmental protection are not captured by statistics on income growth.

The human development approach later had to be rebalanced by integrating the environmental dimension and determining how developing countries could contribute to global sustainability: the HDI—“a summary measure of average achievement in key dimensions of human development: a long and healthy life, being knowledgeable and a decent standard of living”—was reimagined and recalculated, resulting in the Human Sustainable Development Index (HSDI).

Lastly, it bears noting that the Bank has been heavily involved in the promotion and realization of the Millennium Development Goals (MDG), the predecessor of the Sustainable Development Goals (SDG).

The foregoing illustrates the World Bank’s tentative, if not initially unresponsive, stance towards sustainable development. This attitude, Susan Park rationalizes, is the result of norm contestation

53. Wise, supra note 51, at 48.
by environmental groups and of broader interstate negotiations about how the international community should tackle the environmental problems relating to economic growth.\(^59\) These external actions contributed to the Bank’s modification of its own conception of and approach to sustainable development.\(^60\) Günther Handl describes the Bank’s contentious involvement in “social and ‘sustainable’ development, as against ‘economic development,’” in terms of the “persistent differences among [shareholding countries] over the specific role of the [Bank]”—with some countries continuing to view the Bank primarily as a financial institution that makes decisions on purely financial and economic grounds, while others “have advocated a much stronger human resources and sustainable development orientation.”\(^61\)

As these accounts show, the Bank has considerably expanded and reconstructed its mandate, thereby leading to the current moment wherein it is intuitive and natural to look towards MDBs for “financing sustainable development and providing know-how” and to expect them “to establish a process to examine their own role, scale and functioning to enable them to adapt and be fully responsive to the sustainable development agenda.”\(^62\) The MDBs themselves in fact declare:

> With our country clients in the lead, we reaffirm our commitment as development institutions to deepen and widen our partnerships with both the private and public sectors. We will individually and collectively bring in emerging and existing global, regional, sub-regional and national partner institutions and, together, contribute to the success of the 2030 Agenda, helping countries to leverage the financing and knowledge of the MDBs and the IMF to address their most pressing development challenges and, as such, contribute to achieving the transformative outcomes that the SDGs entail.\(^63\)

Today, there exists little doubt that the World Bank and other MDBs and IFIs support the global pursuit of sustainable development.

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60. *Id.*
A common theme among the international policy and legal instruments, especially the post-Rio ones, concerns the “pivotal role [of IFIs] in the sustainable development process” and the need for them to alter the “traditional perception of their functions and purposes” and come up with “innovative financial mechanisms” to implement sustainable development. 64 Indeed, any gap or inconsistency between the pursuit of sustainable development and the developmental work of the World Bank appears to be narrowing.

Before proceeding to the legal and policy justifications for the evolution and reconstruction of the Bank’s mandate—pejoratively, the mission creep—it is first necessary to examine the contemporaneous changes occurring in various international fora (besides the IFIs) concerned with development. Part III contains such summary discussion.

III. THE CONCEPT OF SUSTAINABLE DEVELOPMENT: A CONTEMPORANEOUS EVOLUTION

Due to its vague and excessively generic definition, sustainable development is viewed to be a mere aspirational goal and moral obligation, or a political commitment at best. 65 Other critical academics take a “reserved and cautious approach,” 66 describing sustainable development as “a convenient umbrella term to label a group of congruent norms” and argue that “[w]hatever the label might be, it is itself not a norm; [at best] it can be no more than a name for a set of norms.” 67 A few authors treat sustainable development as a principle (contra rule) or an aggregation of interrelated principles. 68 Another group of commentators describe the

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64. Handl, Legal Mandate, supra note 61, at 655–56.


72. Cordonier Segger, supra note 71, at 141.

Relatively, Günther Handl offers an interesting way of harmonizing the concept’s necessary generality and the desired specificity:

“[G]eneral rules” and “specific obligations” relating to “sustainable development” are mutually interdependent in the sense of a dialectic relationship: only as specific normative implications are defined for an even larger number of contexts and actors, will the ambiguity inherent in the basic Rio formulations diminish over time. Conversely, the gradual hardening of the contours of the concept will eventually also allow more focused legislative projections of specific obligations.

The “optimists,” on the other hand, posit that sustainable development has some normative force, either as a general principle of international law or a customary norm, and such legal norm “would be mainly related to the integration of environment and socio-economic development: that States shall take environmental protection into account in the development process and vice versa.” Additionally, Cordonier Segger describes a better perspective on sustainable development’s legal relevance, thus: different opinions about sustainable development’s character and status by placing them on a spectrum of soft and hard law.

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A slightly more optimistic view would be that States are, building on this commitment to integration of environment, social and economic priorities in the development process, also beginning to recognize a right of States to promote sustainable development, implying a related duty not to interfere duly with each others’ efforts to do so (as implied in the Uruguay River Pulp Mills case).

This Article subscribes to the optimistic position and further adopts Christina Voigt’s view that sustainable development is a principle of law requiring a holistic approach to dispute resolution whose “normative force aims at the integration of various norms and respective interests while ensuring the functioning of essential natural processes.” The constructive characterization of sustainable development emphasizing the principle of integration hews closely to the World Bank’s evolving understanding of development as described in Part II.

Principle 4 of the Rio Declaration likewise bolsters the notion of integration, although it appears to expressly refer only to the environmental and economic aspects. Indeed, Philippe Sands observes that “[i]t is likely that UNCED’s most important contribution was the emphatic recognition and affirmation of the interrelationship between environment and development, as reflected in the commitment of States to treat the two in a fully integrated manner.”

He also refers to international law in the field of sustainable development as “a broad umbrella accommodating the specialized fields of international law which aim to promote economic development, environmental protection and respect for civil and political rights.”

Significantly, the principle of integration resonates in the 2030 Agenda, which presents the SDGs as “integrated and indivisible and

73. Id. at 141.
74.VOIGT, supra note 71, at 170–71; see also Christina Voigt, The Principle of Sustainable Development: Integration and Ecological Integrity, in RULE OF LAW FOR NATURE: NEW DIMENSIONS AND IDEAS IN ENVIRONMENTAL LAW 146–57 (Christina Voigt ed., 2013).
76. See Ximena Fuentes, International Law-Making in the Field of Sustainable Development: The Unequal Competition Between Development and the Environment, 2 INT’L ENVT’L AGREEMENTS: POLITICS, LAW AND ECONOMICS 109, 109 (2002). (“Nevertheless, there is ample consensus that sustainable development involves the idea of an integration of environmental protection and economic development.”).
78. Id. at 379.
79. FRENCH, supra note 37, at 54–57; Virginie Barral & Pierre-Marie Dupuy, Principle 4: Sustainable Development through Integration, in THE RIO DECLARATION ON
balance the three dimensions of sustainable development: the economic, social and environmental.”³⁰ This principle has received broad consensus among the 193 states³¹ that signed and agreed to the U.N. General Assembly Resolution laying down the 2030 Agenda for Sustainable Development.³² Hence, the principle of integration should not be discarded, because it conceptually forms part of the core of sustainable development.

The much-criticized imprecision and ambiguity of sustainable development strategically make consensus among considerably diverse actors possible by giving to all stakeholders at least some portion of what each desires.³³ As one author pragmatically states, “Sustainable development, even as a purely political statement, must have impacted in some way international environmental law.”³⁴ More powerfully, Judge Bruno Simma defends the significance of sustainable development in international law, thus:

[P]erhaps it is inevitable that content and contours of an integrative concept such as that of sustainable development which was endorsed as such by the

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³³ Sustainable development’s success and pervasiveness are due to its deliberate ambiguity and overarching generic nature that allow various stakeholders to interpret and appropriate the term. See Gilbert Rist, THE HISTORY OF DEVELOPMENT: FROM WESTERN ORIGINS TO GLOBAL FAITH 192 (2002); Jaye Ellis, Sustainable Development and Fragmentation in International Society, in GLOBAL JUSTICE AND SUSTAINABLE DEVELOPMENT 57, 64–66 (Duncan French ed., 2010); Park, supra note 59, at 103; Sachs, supra note 65, at 28.
³⁴ Fitzmaurice, supra note 66, at 86.
world community as a whole, lacks the kind of clarity of articulation of concepts one might be accustomed to in a more limited, homogenous group of states. However, that need not necessarily be considered a disadvantage. Indeed, it may well have been the very lack of conceptual rigor which permitted the entire world community to embrace it.  

In sum, although the traditional view of international lawmaking poses challenges against the legal status of a vague and overbroad concept such as sustainable development, it cannot be gainsaid that these same characteristics can be quite useful, because they allow diverse perspectives within the international community to converge; create conditions suitable for cooperation among various participants; and imbue the concept with legal relevance.

A. UN Initiatives and International Instruments: From Stockholm to Rio to New York

At present, no universally binding multilateral treaty specifically defines the concept of sustainable development, much less governs its pursuit. Nevertheless, there is a multitude of international, regional, and national instruments of varying degrees of normativity and binding force that refer to sustainable development, elaborate on its different components and implications, and affect the behavior of both states and non-state actors.  

This fact justifies the claim that “sustainable development is now widely accepted as a global objective” and “is a matter of common concern both to developing and industrialized countries.” Apart from identifying broader common ground for future agreements, these non-binding instruments are legally relevant insofar as they could give rise to legitimate expectations—on the part of states and the wider international community—such that states signing on to these consensus declarations “might be precluded from deliberately violating agreements or commitments assumed in soft law without notice” or may be (politically) demanded to act in accordance with such commitments.


86. See non-exhaustive enumerations in SCHRIJVER, supra note 71, at Chapters III and IV; Beyerlin, supra note 80, at 96–101; MAGRAW & HAWKE, supra note 50, at 622–28.


A majority of the literature tracing the evolution of sustainable development pegs its transformation into a concept of some consequence to the international community on the United Nations Conference on the Human Environment (UNCHE) in Stockholm in 1972, although the concept had then yet to assume its present name of “sustainable development.”

The Brundtland Commission’s definition of sustainable development is the most familiar one that has been universally (or almost universally) accepted and which endures to this day, in spite, or because, of its abstract and broad formulation. In this respect, it bears emphasis that the definition in Our Common Future, the report of the World Commission on Environment and Development (Brundtland Commission), is anthropocentric in standpoint. The subsection entitled “Sustainable Development” in fact identifies humanity as both the subject and the actor: the one that “has the ability to make development sustainable—to ensure that it meets the needs of the present without compromising the ability of future generations to meet their own needs.”

The two succeeding sentences, which receive less attention than they deserve, acknowledge natural or environmental limits, albeit not absolute ones:

The concept of sustainable development does imply limits—not absolute limits but limitations imposed by the present state of technology and social organization on environmental resources and by the ability of the biosphere to


absorb the effects of human activities. But technology and social organization can both be managed and improved to make way for a new era of economic growth.93

Apart from characterizing sustainable development as a concept, the Brundtland Commission also describes it as a dynamic process requiring citizen participation and political will:

[I]n the end, sustainable development is not a fixed state of harmony, but rather a process of change in which the exploitation of resources, the direction of investments, the orientation of technological development, and institutional change are made consistent with future as well as present needs. We do not pretend that the process is easy or straightforward. Painful choices have to be made. Thus, in the final analysis, sustainable development must rest on political will.94

The foregoing description—an anthropocentric concept and process—is helpful in appreciating the expansiveness of the concept of sustainable development and in understanding why observers from a wide range of disciplines and perspectives can present varied, and sometimes conflicting, characterizations.

As the international community continued to grapple with the interrelationships among economic growth, social progress, and environmental protection, the United Nations decided to organize another conference on the topic twenty years after Stockholm. The 1992 U.N. Convention on Environment and Development (UNCED) in Rio de Janeiro is important for several reasons, one of which, according to Edith Brown Weiss, is the fact that it generated four of the most important conventions and instruments for international environmental law.95 Magraw and Hawke note that it was in Rio that sustainable development first received imprimatur from the world’s governments, who collectively adopted sustainable development as the development paradigm and made it “the underlying theme of the five instruments [they] adopted” at that time.96 The same authors, who point out that it took several decades for human society to undergo a “profound change in the way [it] views the relationship between economic activity and the natural environment,” conclude

93. Id. ¶ 27.
94. Id. ¶ 30 (emphasis added).
95. Weiss, supra note 89, at 10–11.
96. MAGRAW & HAWKE, supra note 50 at 614–16; see also Alexandre S. Timoshenko, From Stockholm to Rio: the Institutionalization of Sustainable Development, in SUSTAINABLE DEVELOPMENT AND INTERNATIONAL LAW 143, 152 (Winfried Lang ed., 1995) (apart from political legitimisation, the UNCED also substantively elaborated sustainable development and provided it with the legal and institutional foundations for its practical application and implementation).
their discussion on the evolution of sustainable development\textsuperscript{97} with this statement:

Taking the 2005 World Summit Outcome as a whole, together with the other instruments mentioned earlier [1995 Copenhagen Declaration on Social Development; 2000 UN Millennium Declaration; 2002 Johannesburg Plan of Implementation] and the fact that day-to-day discourse at the United Nations and elsewhere routinely use the term “sustainable development,” sustainable development as described in this chapter remains the overarching paradigm for both development and environmental protection.\textsuperscript{98}

Views about international instruments that mention sustainable development, such as the Rio Declaration, range from considering the Declaration as “part of an ongoing process of codification and development of international environmental law” to “marking a transition from international environmental law and international economic law to an international law of sustainable development.”\textsuperscript{99}

Seeking to assuage the skepticism about the existence of an international law on sustainable development, this Article presents the preliminary components of a broader claim that international law on sustainable development does exist and part of it results, not only from inter-state actions and interactions, but from processes occurring in a transnational\textsuperscript{100} (non-domestic) context and involving the participation of non-state actors, such as IOs and individuals, as well.

Interestingly, a number of discussions appear to place less emphasis and attention on the social dimension of sustainable development that was first\textsuperscript{101} explicitly identified in the 1995

\textsuperscript{97}. See Delyse Springett & Michael Redclift, History and Evolution of the Concept of Sustainable Development, in ROUTLEDGE INTERNATIONAL HANDBOOK OF SUSTAINABLE DEVELOPMENT 3 (Michael Redclift & Delyse Springett eds., 2015) (tracing concisely not only the concept’s origins but the legal and political issues/challenges surrounding its emergence as well); see also Michael Redclift, Sustainable Development (1987–2005): An Oxymoron Comes of Age, 13 SUSTAINABLE DEV. 212 (2005) (arguing for revisiting the idea of sustainable development in the light of recent material changes in the physical environment, information technologies, and the human body).

\textsuperscript{98}. MAGRAW & HAWKE, supra note 50, at 618.

\textsuperscript{99}. Boyle & Freestone, supra note 89, at 2–3 (citations omitted).

\textsuperscript{100}. See PHILIP C. JESSUP, TRANSNATIONAL LAW 2–4 (1956) (defining ‘transnational law’ as “all law which regulates actions or events that transcend national frontiers”; and ‘transnational situations’ as those that “may involve individuals, corporations, states, organizations of states, or other groups”).

\textsuperscript{101}. The Brundtland Report’s discussion of poverty as both a cause and an effect of environmental degradation is an acknowledgment of the social dimension of sustainable development. SUMUDU A. ATAPATTU, EMERGING PRINCIPLES OF INTERNATIONAL ENVIRONMENTAL LAW 93 (2006). But see Wise, supra note 51, at 47.
Copenhagen Declaration on Social Development. Apart from affirming the anthropocentric approach to development, this declaration expressed the member states’ sentiment that:

[E]conomic development, social development and environmental protection are interdependent and mutually reinforcing components of sustainable development, which is the framework for our efforts to achieve a higher quality of life for all people. Equitable social development that recognizes empowering the poor to utilize environmental resources sustainably is a necessary foundation for sustainable development. We also recognize that broad-based and sustained economic growth in the context of sustainable development is necessary to sustain social development and social justice.

More than a decade after these conferences and declarations, the international community has entered a new era that Jeffrey Sachs calls the age of sustainable development, wherein “[g]lobal society is interconnected as never before,” and technological advances, coupled with expansion in knowledge and improvement in business practices, have presented “new opportunities and also new risks.” Sachs presents sustainable development as “both an analytical theory and a ‘normative’ or ethical framework”:

[S]ustainable development is both a way of looking at the world, with a focus on the interlinkages of economic, social, and environmental change, and a way of describing our shared aspirations for a decent life, combining economic development, social inclusion, and environmental sustainability . . . . Our new era will soon be described by new global goals, the . . . (SDGs).

Built on the success and momentum of the MDGs, the SDGs are more expansive and ambitious in terms of covered areas and of the participants and stakeholders. As pertinent to the World Bank and this Article: “A core feature of the SDGs is their strong focus on means of implementation—the mobilization of financial resources—capacity-building and technology, as well as data and institutions.”

B. International Jurisprudence

The resolution of legal disputes based on international environmental law has been few and far between to date. Hence, the

103. Id. ¶ 6.
105. Id. at xiii.
107. Id.
legal status or character of sustainable development has yet to be judicially resolved, whether by the International Court of Justice (ICJ), regional courts, or arbitral tribunals. The ICJ did, however, characterize sustainable development as a concept (rather than a principle, rule, or norm), and hinted at the integrative requirement of sustainable development:

Throughout the ages, mankind has, for economic and other reasons, constantly interfered with nature. In the past, this was often done without consideration of the effects upon the environment. Owing to new scientific insights and to a growing awareness of the risks for mankind—for present and future generations—of pursuit of such interventions at an unconsidered and unabated pace, new norms and standards have been developed, set forth in a great number of instruments during the last two decades. Such new norms have to be taken into consideration, and such new standards given proper weight, not only when States contemplate new activities but also when continuing with activities begun in the past. This need to reconcile economic development with protection of the environment is aptly expressed in the concept of sustainable development.

The dispute in the Case Concerning the Gabčíkovo-Nagymaros Project (from which the quoted paragraph was taken) was triggered when Hungary, who had a treaty-based joint investment project with Czechoslovakia (for the construction and operation of a hydroelectric power plant in the Danube River, which lies at a border of the two countries), invoked a “state of ecological necessity” and unilaterally decided to suspend works for the project, supposedly due to environmental harms arising from such works. Czechoslovakia challenged such decision as a violation of Hungary’s obligations under their treaty. Rejecting Hungary’s state of necessity defense, the Court held that “Hungary was not entitled to suspend and subsequently abandon” the works for which it was responsible under the treaty with Czechoslovakia. One of this case’s crucial and novel features is the judicial imposition of an obligation on the disputants, who were also parties to an economic partnership treaty, to “together... look afresh at the effects on the environment of the operation of the [subject] power plant,” which injunction was followed by the Court’s clarification that the Parties themselves—not the Court—are tasked “to [negotiate and] find an agreed solution that takes account of the [subject treaty’s objectives that include economic development], which must be pursued in a joint and integrated way, as well as of the

108. FITZMAURICE, supra note 66, at 84.
110. Id.
111. Id. ¶¶ 40–41.
112. Id. ¶ 59.
norms of international environmental law and the principles of the law of international watercourses.”\textsuperscript{113}

Another case often cited as elaborating the concept of sustainable development is the Arbitration regarding the Iron Rhine (“Ijzeren Rijn”) Railway between the Kingdom of Belgium and the Kingdom of Netherlands,\textsuperscript{114} which pitted the Netherlands’ asserted sovereign right to effect environmental protection measures against Belgium’s invocation of a treaty-based right of transit across the Netherlands’ territory via the subject railway.\textsuperscript{115} The tribunal’s award cited the Stockholm and Rio Declarations to support the conclusion that “both international and [European Community] law require the integration of appropriate environmental measures in the design and implementation of economic development activities.”\textsuperscript{116} Furthermore, emerging principles within international environmental law that “make reference to conservation, management, notions of prevention and of sustainable development, and protection for future generations” should be taken into consideration in the interpretation of treaties and the adjudication of the dispute.\textsuperscript{117} The tribunal accordingly held that “[e]nvironmental law and the law on development stand not as alternatives but as mutually reinforcing, integral concepts, which require that where development may cause significant harm to the environment there is a duty to prevent, or at least mitigate, such harm”, and stated that such duty “has now become a principle of general international law.”\textsuperscript{118}

In the more recent Case Concerning Pulp Mills on the River Uruguay,\textsuperscript{119} Argentina raised environmental concerns regarding Uruguay’s unilateral authorization of the construction of pulp mills on a shared river, the regime for the use of which consisted of procedural and substantive obligations established in a bilateral treaty between the two countries.\textsuperscript{120} In connection with its observation that the treaty between the riparian states reflected “the need to strike a balance between the use of the waters and the protection of the river,” the ICJ referred to sustainable development as an objective, whose essence is the “interconnectedness between equitable and reasonable utilization of a shared resource and the balance between economic development and environmental protection.”\textsuperscript{121} The Court ultimately found Uruguay’s unilateral acts

\textsuperscript{113} Id. ¶¶ 140–41.
\textsuperscript{115} Id. ¶¶ 23–25.
\textsuperscript{116} Id. ¶ 59.
\textsuperscript{117} Id. ¶¶ 58, 60.
\textsuperscript{118} Id. ¶ 59.
\textsuperscript{120} Id. ¶¶ 25–46.
\textsuperscript{121} Id. ¶ 177.
to be in breach of its procedural obligations, but not of its substantive obligations including those that relate to environmental protection and rational utilization of the shared natural resource.\footnote{122}{Id. ¶¶ 275–76.}

To conclude this Part, while the ICJ has yet to issue a definitive clarification as to the legal status and the content of sustainable development, it has nevertheless occasionally referred to it and alluded to its component principle of integration, among others. By so doing, the Court is signalling that the concept has some relevance in international law.

IV. IN DEFENSE OF WORLD BANK MISSION RECONSTRUCTION

After examining in Part I the historical, intellectual, geopolitical, and legal factors that influenced the World Bank’s interpretation of the notion of development, and in Part III the contemporaneous evolution of the concept of sustainable development on the international stage, this Part presents legal and policy arguments supporting the Bank’s mission reconstruction and participation in the global pursuit of sustainable development.

The discussion here disaggregates and distinguishes the different assertions bundled in the mission creep position. To rebut these assertions, this Part puts forward the corresponding legal, policy, and practical justifications for supporting the evolution of the Bank’s mandate. The last subpart of this Part examines how these justifications have manifested in specific non-economic areas and issues that the Bank has taken on in recent years.

A. Mission Reconstruction, Not Mission Creep

disparaging term, mission creep, the evolution and expansion of the Bank’s roles and scope of activities are better characterized as \textit{mission reconstruction}. This assertion refutes the mission creep claim or \textit{ultra vires} argument against the World Bank, on a similar ground propounded by John Head, who employed a purposive or teleological interpretation of the IBRD Articles in arguing that issues relating to “environmental protection, indigenous peoples, involuntary resettlement, governance, corruption, public participation, the role of women in development, and poverty reduction . . . can have a bearing on the central objectives prescribed for all of the [multilateral development banks] in their charters” that would legally justify the Bank’s involvement in such seemingly non-economic matters.

Briefly, mission creep represents the position that the World Bank acts beyond its mandate under the Articles of Agreement when it directs attention and resources to non-economic matters such as environmental protection, governance, and human rights. Implicit in this argument is a broad proposition that the economic domain does not or cannot involve social or environmental concerns, and as an international economic organization, the World Bank has neither authority nor competence to act on issues that are not economic in character. Curiously, in a manner that echoes this mission creep position, the Bank has invoked the political activity prohibition under its Articles to argue that no legal obligations relating to human rights can be attributed to it.

\begin{footnotesize}
\begin{itemize}
  \item \textsuperscript{125} \textsc{John W. Head, The Future of the Global Economic Organizations: An Evaluation of Criticisms Leveled at the IMF, the Multilateral Development Banks, and the WTO} 124–25 (2005).
\end{itemize}
\end{footnotesize}
From a more practical and not strictly legal perspective, Jessica Einhorn explains that the proliferation of knowledge in the decades following the Bretton Woods Conference and the emergence of new pressing global concerns, which placed the Bank under pressure from its many different constituencies (i.e., the debtor and creditor states who are all shareholders, other IOs, civil society, and the project-affected people), have caused the Bank to embrace “an unachievable vision instead of an operational mission,” such that it has taken on “challenges that lie far beyond any institution’s operational capabilities.” Otherwise stated, the Bank is accused of distorting or “deemphasizing” its role as a development bank—the niche it was originally intended to fill due to its perception—largely a correct one, as this Part argues—that it needs to address not only the member states’ interests but also the demands and plight of the persons supposed to be benefited by its projects.

This Article adopts the distinction that others have made between (i) critics who argue against any expansion, because it is thought to politicize the Bank, undermine its efficacy, and encroach on the member states’ sovereignty; and (ii) critics who object to the manner and direction that the Bank’s mission has expanded, rather than to expansion per se. Notably, the latter group raises a number of interrelated objections stemming from concerns about the Bank’s (a) competence and expertise to assume new tasks and (b) accountability to its shareholders (member states) and the persons affected by its operations.

The first prong of this Article’s contention responds to the first group of critics, who oppose any sort of evolution in the Bank’s mandate (“not any mission creep”). This justification takes on a legal perspective and posits that the Articles of Agreement, interpreted following the Vienna Convention rule with emphasis on the teleological and evolutionary approaches, permit the Bank’s involvement in seemingly political issues that have an impact on development.

The second prong addresses the group concerned with the specific ways that the Bank has expanded its mission. This justification is a normative and policy claim that it is prudent and imperative for the World Bank to participate in the pursuit of


127. Einhorn, supra note 124.


130. Bradlow, supra note 129, at 711–12.
sustainable development—and thereby integrate the economic, environmental, and social dimensions of development—because it is an organization that not only has the distinct standing and capability to draw and mobilize financial resources from both public and private entities, but also the knowledge built on decades of on-the-ground experience (both good and bad), complemented by continuing research and learning within the institution.

Lastly, for those who remain wary of the Bank’s evolution in general, the proposed interpretive framework seeks to constrain the Bank’s discretion as regards its transformation by enjoining that the interpretation of its mandate become sensitive to, and guided by, the international community’s demands and expectations, which have presently converged on the concept of sustainable development.

Relatodly, Handl asserts that when MDBs such as the World Bank voluntarily assume roles under certain multilateral environmental agreements, they occupy a “position of special responsibility,” and their support of “environmental protection and social development” becomes part of the “core aspects of their expanded development mandates.” Hence, they are “deemed not merely authorized but legally required to pursue these objectives actively in their various lending operations in developing member countries.” This argument is consistent with the oft-repeated calls—recently reiterated in the 2030 Agenda—for the creation of an enabling international economic environment to complement national sustainable development efforts, and especially, to assist developing countries in those efforts.


132. See Morais, supra note 8, at 68. “[T]he MDBs and the IMF have been summoned by the international community to take on these tasks” of addressing the multidimensional challenges posed by globalisation because: “(a) they are universal organizations that are already deeply involved and experienced in addressing development issues with their member countries and also (b) they have tremendous financial influence in persuading member countries to undertake needed reforms in the context of their own operations.” Id.

133. Handl, Legal Mandate, supra note 61, at 663–64. Although Handl correctly points out the MDBs “position of special responsibility” in the promotion of sustainable development, he himself notes the lack of State practice, not to mention opinio juris, on this point. Hence, it would take at present a conceptual and jurisprudential leap to attach legal obligation to such position of special responsibility. Id.

134. FRENCH, supra note 34, at 194; Handl, Legal Mandate, supra note 70, at 664.

135. See 2030 Agenda, supra note 80, ¶ 63; see also G.A. Res. S/19-2, Programme for the Further Implementation of Agenda 21, ¶ 25 (Sept. 19, 1997) (“A mutually supportive balance between the international and the national environment is needed in the pursuit of sustainable development. . . . The gap between developed
B. Teleological, Evolutionary, and Contextual Approaches to Constituent Treaty Interpretation

According to functionalism theory, the competence and scope of activity of international organizations are delineated by their charters or constituent instruments. The dual character rationalizes the interpretation of such documents using teleological and evolutionary approaches. Article 31 of the VCLT, entitled “General rule of interpretation,” enumerates in four paragraphs various means of treaty interpretation, but it establishes no hierarchy among these means—in good faith; ordinary meaning in context; object and purpose; components of context; other rules of international law; special meaning—such that all of them “will be considered in one and the same, single process of application” without any one particular means of interpretation dominating the others. Following the so-called crucible approach, these elements form part of a single combined operation wherein all various elements “would be thrown into the crucible, and their interaction would give the legally relevant interpretation.” Notably, although Article 31 uses the ordinary meaning of the text as the starting point, it neither takes an exclusively textualist or literalist position, nor disregards the parties’

and developing countries points to the continued need for a dynamic and enabling international economic environment supportive of international cooperation, particularly in the fields of finance, technology transfer, debt and trade, if the momentum for global progress towards sustainable development is to be maintained and increased.”


141. Villiger, supra note 139, at 426–27.
intention and the context of treaty terms. As one commentator explains, “a distinct significance does attach to the use here of the singular ‘rule’ . . . which is to be read as having the role of indicating how article 31 is to be applied, emphasizing the unity of its several paragraphs and its intended application as a single operation.”

Moreover, the general rule includes a teleological or purposive element, which, although not stated in explicit and detailed terms, is embodied in Article 31(1)’s final words, which allow “consideration of the principle of ‘effectiveness’ in the more general sense.” The doctrine of implied powers, as well as the related principle of effectiveness, underpins the teleological approach, which, in the case of IOs’ constituent treaties, is justified by the need to allow such IOs to “fulfil their purposes in response to new needs.” Remarkably, the object and purpose of an organization is seen as the central determinant of the evolutionary (dynamic) interpretation of constituent treaties, and “[w]ithin the framework of the teleological approach, considerations of effectiveness in achieving the stated purpose, as well as principle of speciality, play an important role.”

The foregoing brief review of the general rule of treaty interpretation expressed in Article 31 serves to demonstrate how the interpretive approach currently used in the Bank fits into the Vienna Convention framework.

In applying the VCLT and exploring other approaches to treaty interpretation, it is useful to remember the ICJ’s recognition of the U.N. Charter as “a multilateral treaty, albeit a treaty having certain special characteristics” that justified the use of “the principles and rules applicable in general to the interpretation of treaties.” According to the Court, what makes constituent instruments special is their production of an autonomous entity, “to which the parties

142. GARDINER, supra note 139, at 185, 197–98.
143. See ILC Report, supra note 140, at 220, ¶ 11; EIRIK BJØRGE, THE EVOLUTIONARY INTERPRETATION OF TREATIES 89 (2014). According to Villiger, one of the reasons for the perpetuation of this belief and the ensuing discrepancies in the practice application of the general rule is the fact that “various approaches can be read into Articles 31 and 32 precisely because ILC intended them to serve as a compromise to satisfy textualists, subjectivists, and teleologists.” Villiger, supra note 138, at 117.
144. GARDINER, supra note 139, at 38.
146. GARDINER, supra note 139, at 211.
147. KLABBERS, supra note 136, at 83.
148. Id. at 83; José E. Alvarez, LIMITS OF CHANGE BY WAY OF SUBSEQUENT AGREEMENTS AND PRACTICE, in TREATIES AND SUBSEQUENT PRACTICE 123, 128 (Georg Nolte ed., 2013).
entrust the task of realizing [their] common goals.”\textsuperscript{151} Constituent instruments are also said to be “lawmaking treaties,” as they “establish general rules for future international conduct [within the international system, which itself is changing,] of a large number of nations.”\textsuperscript{152}

As applied to the IBRD Articles, their lawmaker character implies that “the Bank had been expected ‘at all times to adapt itself to the changing needs of the world, if only to ensure its continued relevance,’” and, since amendments can be cumbersome, “the burden of adapting the Bank to the changing needs of its member countries [rests] on the process of interpretation.”\textsuperscript{153} The “creative ambiguity” that was deliberately used in drafting the Articles of Agreement of the Bretton Woods institutions\textsuperscript{154} and the “inseparability of the economic and political spheres”\textsuperscript{155} warrant the consideration of contextual and teleological elements when applying the general rule in VCLT, Article 31.

On the necessity for adaptation through interpretation, Malgosia Fitzmaurice suggests the appropriateness of an evolutionary approach to the interpretation of treaties that create IOs or concern human rights, because a certain dynamism “is necessary [in those situations] to account for the practice of States Parties to the treaty and the organs of the international organization.”\textsuperscript{156} A teleological-evolutionary approach is similarly justified when interpreting constituent instruments as constitutions, because the rationale for creating IOs is that “their purposes and functions cannot be achieved by the creation of simple norms of conduct by means of treaties . . . [and such] purposes and functions can be achieved only by the permanent operation of organizational entities.”\textsuperscript{157}
At this juncture, it bears elaborating what the so-called evolutionary approach entails. Evolutionary interpretation is necessitated by any or all of the following: (i) a change in the meaning of a term in the treaty “so as to include new activities, scientific advances, [and] technological advancements”; (ii) a treaty is inherently adaptable to changes by virtue of its “constitutional characteristics,” meaning it creates and gives powers to an international organization, and this necessitates elaboration to have precise effect; and (iii) emergence of new fields of law or later treaties and other developments elsewhere in the legal system.\footnote{158}

For Eirik Bjorge, evolutionary interpretation occurs in “situations in which an international court or Tribunal concludes that a treaty term is capable of evolving . . . so that allowance is made for, among other things developments in international law . . . [and] account is taken of the meaning acquired by the treaty terms when the treaty is applied.”\footnote{159} He additionally suggests that giving effect to the intention of the parties and taking into account their legitimate expectations\footnote{160} based on the promises made in the treaty are linked to evolutionary interpretation: “the [objectivized] intention of the parties and the evolutionary interpretation of treaties are cut from the same cloth.”\footnote{161} More simply, the dynamic-evolutionary method of interpretation is described as being opposite to the static or textual approach, and as such, “leaves ample room for constitutional adaptation.”\footnote{162}

The ICJ laid down the conditions for the presumption that treaty parties intended an evolutionary interpretation: (i) use of generic terms and (ii) the treaty has been entered into for a very long time or is of continuing duration.\footnote{163} According to the Court, once it is established that a word was used as a generic term, “the presumption necessarily arises that its meaning was intended to follow the evolution of the law and to correspond with the meaning attached to the expression by the law in force at any given time.”\footnote{164} One author summarizes: “terms must be interpreted evolutively if (and, apparently, only if) the parties intended it,”\footnote{165} and when such intention had been established, there ought to be no objection as to how the terms shall evolve, meaning “treaty provisions may evolve as

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\begin{itemize}
    \item \footnote{158}{GARDINER, supra note 139, at 468.}
    \item \footnote{159}{BJORGE, supra note 143, at 59.}
    \item \footnote{160}{Id. at 64.}
    \item \footnote{161}{Id. at 139.}
    \item \footnote{163}{Dispute Regarding Navigational and Related Rights (Costa Rica v. Nicar.), Judgment, 2009 I.C.J. 213, ¶¶ 64–66 (July 13).}
    \item \footnote{164}{Aegean Sea Continental Shelf (Greece v. Turk.), Judgment, 1978 I.C.J. 3, ¶ 77 (December 19) (cited in Navigational Rights Case, at ¶ 65).}
    \item \footnote{165}{Sondre Torp Helmersen, Evolutive Treaty Interpretation: Legality, Semantics and Distinctions, 6 EUR. J. LEGAL STUD. 161, 171 (2013).}
\end{itemize}
intended, even though they do so in ways the drafters cannot control and could not predict.”

The IBRD Articles of Agreement and the terms therein satisfy these conditions. Like most constituent instruments, the IBRD Articles were drafted with the objective of enabling the created IO to subsist for a long period of time. Indeed, the member states’ present actions corroborate this objective of maintaining the IBRD in order to have “an international institution concerned with the reconstruction and development of its members”. Rather than abolishing the Bank in the face of criticisms and domestic political debates (including in the United States, the Bank’s largest shareholder) about the institution’s continued relevance, these member states choose to implement incremental changes to the institution’s structure and permissible scope in order to keep it in existence. Moreover, Bank practice illustrates that the terms found in the Articles—“development,” “political,” and “economic”—are generic ones that are broad enough to be variably construed under changing contexts.

The link between the teleological and the evolutionary approaches lies in the dynamism required to respect a treaty’s object and purpose: “If it is the purpose of the treaty to create longer lasting and solid relations between the parties then it is hardly compatible

166. Id. at 172 (citation omitted).
167. Shihata, Dynamic Evolution, supra note 48, at 217–19. The author stresses the fact that almost all the charters of IOs, including the IBRD Articles, require more than simple majority of its governing body or its members to amend the constituent instrument or to terminate the treaty and the institution. Id. at 121.
168. Id. at 225–26. The author explains that in previous interpretations and clarifications of the IBRD Articles “[t]here was no attempt to adhere to a subjective (intentionist) interpretation”; instead, greater attention was accorded to enabling “the Bank to address many areas related to the economic development of its borrowing countries that were not deemed to be so related at the time the Articles of Agreement were drafted.” Id. at 225.
170. See Andrés Rigo Sureda, The Law Applicable to the Activities of International Development Banks, 308 COLLECTED COURSES HAGUE Acad. Int’l L. 9, 195 (2004) (“From a point of view of treaty interpretation, it is interesting to follow how this acceptance of a limited definition of ‘political’, or conversely, an expanded concept of economic considerations has occurred.”).
with this purpose to eliminate new developments in the process of treaty interpretation.” However, the use of the evolutionary approach, even coupled with a consideration of object and purpose, raises some difficulty. Jan Klabbers’s practical objection is that informal treaty revisions, which often result from evolutionary interpretation, could circumvent formal procedures requiring the consent and cooperation of the members States or treaty parties. Andrew Guzman echoes this concern through the “Frankenstein Problem,” (i.e., IOs, with their organs, becoming too independent from their “creators,” the treaty parties.)

In the case of the World Bank and other IFIs, however, its member countries and the international community as a whole appear to be less concerned about these problems. As may be inferred from their continued involvement in the activities of the World Bank Group—e.g., by contracting new loans; receiving new grants; repaying amounts due from pre-existing loans and grants; and making the periodic contributions and replenishments to the World Bank’s funds—member countries, both developing and developed, are signifying their expectations and demands that the World Bank and other IFIs would remain in existence and would participate in and contribute to the sustainable development agenda. Indeed, the IFIs’ role as source of financing and knowledge for this multidimensional agenda is expressed and endorsed in international instruments such as the Monterrey Consensus on Financing for Development (2002) and the Addis Ababa Action Agenda of the Third International Conference on Financing for Development (2015). In the latter outcome document, the signatory states “encourage the multilateral development finance institutions to establish a process to examine their own role, scale and functioning to enable them to adapt and be fully responsive to the sustainable development agenda.” The Addis Ababa Action Agenda is likewise expressly mentioned as “an integral part of the 2030 Agenda for Sustainable Development... [whose implementation] is critical for the realization of the Sustainable Development Goals and targets.” In sum, formal and internal procedures aside, events arising after the Bank’s establishment and subsisting to this day show that its creators, the

171. BJORGE, supra note 143, at 118–19.
172. KLABBERS, supra note 136, at 88–89.
176. Id. ¶ 70.
177. 2030 Agenda, supra note 80, ¶ 40.
member states, have been implicitly supporting or consenting to its various sustainability-oriented shifts in policies and operational activities.

C. Authority to Evolve and Expand

1. Economic-Political “Dichotomy”

At first glance, the purported economic-political dichotomy poses a major hurdle to this Article’s claim about the sustainability-related role of the Bank, since sustainable development involves tasks of a highly political nature. Nonetheless, the provision prohibiting political activity should be construed to incorporate evolving international legal norms related to sustainable development. As participants in the international law process, IFIs should pay attention to sustainable development concerns, “not despite their constituent instruments but, rather . . . because of them.” In this respect, Killinger posits that “[c]ontrary to orthodox reading of the political prohibition in the Articles of Agreement, there are almost no legal limitations to World Bank development policy,” because of the expected continuing shifts within mainstream development thinking about the perceived border between the economic and the political, and the “increasing number of factors [that] are found to affect the development process.”

These insights support this Article’s proposal that, in interpreting the Bank’s constitutive treaty, not only the intent of the treaty parties regarding their created entity’s mandate should be taken into account, but the expectations and demands of the international community as well. In other words, the changing perceptions of the international community about the dynamic interaction between the political and the economic spheres are material to the interpretation of the IBRD Articles.

The legal bases for the Bank’s non-political character and the imperative to limit its concerns to economic considerations are expressed in Article IV, Section 10; Article III, Section 5(b); and

179. *Id.* at 665.
181. *Articles of Agreement of the International Bank for Reconstruction and Development*, Art. 1, Dec. 27, 1945, 60 Stat. 1440, amended by 16 U.S.T. 1942, Dec. 17, 1965 [hereinafter IBRD Articles] (“The Bank and its officers shall not interfere in the political affairs of any member; nor shall they be influenced in their decisions by the political character of the member or members concerned. Only economic considerations shall be relevant to their decisions, and these considerations shall be weighed impartially in order to achieve the purposes stated in Article I.”).
182. *Id.* art. III, § 5(b) (“The Bank shall make arrangements to ensure that the proceeds of any loan are used only for the purposes for which the loan was granted,
Article V, Section 5(c).183 These provisions setting out the Bank’s non-political mandate form the core of the first group of critics’ argument against any evolution and expansion of the Bank’s mandate to include non-economic matters.184 To rebut this claim, this subpart shows that the IBRD Articles were precisely designed to enable the Bank’s policymaking organs to interpret these provisions in a flexible manner so as to accommodate changes in the context in which the institution operates.185

Construing these provisions, Shihata opines that when the political stability of a government deteriorates to such level that it starts to threaten the security of the state’s territories and people and to adversely affect its prospective creditworthiness, the World Bank is entitled to take into account such facts, but it “would still be taking into account relevant economic considerations [with] political events [representing] only the historical origins or the cause which gave rise to such considerations.”186 Additionally, because of its Relationship Agreement187 with the United Nations and the fact that international obligations of the Bank’s member states under the Charter take precedence over their other treaty obligations, the Bank is legally bound to “pay due accord to factors which are basically political in nature” and abide by Security Council decisions.188

Shihata initially expressed doubts about directly involving the Bank in such virtuous and necessary objectives as democratization and political reform.189 To him, the political activity prohibition is unambiguous and unqualified, and “the very nature of the Bank, as

with due attention to considerations of economy and efficiency and without regard to political or other non-economic influences or considerations.”

183. Id. art. V, § 5(c) ("The President, officers and staff of the Bank, in the discharge of their offices, owe their duty entirely to the Bank and to no other authority. Each member of the Bank shall respect the international character of this duty and shall refrain from all attempts to influence any of them in the discharge of their duties.").


185. See Shihata, Dynamic Evolution, supra note 48, at 219 (“For an international organization, its overall purpose and the actual challenges and needs to which, consistent with that purpose, it is required to respond are determinant factors in interpreting its charter.”).


188. Shihata, WB and Governance, supra note 186, at 76.

an organization external to the country, with a specialized mandate and a weighted voting structure, does not qualify it to play that role with any measure of success.” 190 In the same vein, attempts to include democratic and human rights principles into lending decisions, 191 albeit noble, may sometimes have to concede to the necessity for IFIs to preserve consistency in application of lending criteria in order to maintain their legitimacy, 192 because “democracy and human rights principles are not self-evident [in practice],” so “it would be almost impossible to consistently apply any criteria involving judgments on human rights questions.” 193

Nevertheless, Shihata appears to have later shifted positions and presented the following interpretation and analysis:

The term “political” has other meanings, however, which are more pertinent in the context of the Bank’s Articles. Since these Articles recognize the relevance of economic considerations but exclude political ones, they must assume an established distinction between the two. The more relevant meaning of the excluded political factors should therefore be found in what the Oxford Dictionary defines as “belonging to or taking a side in politics or in connection with the party system of government; in a bad sense, partisan; factions” as well as “the political principles, convictions, opinions or sympathies of a person or party.” This [prohibition] . . . should exclude, for the purposes of the Bank’s Articles, such typical economic and technical issues as the “management of money or the finances” or more generally the efficient management of the country’s resources. 194

Shihata’s memorandum initially looked at the ordinary—i.e., dictionary—meaning of the vague word “political” and then implicitly considered the underlying rationale for the prohibition, to select from among the several meanings the one that would be most relevant to the IBRD Articles. 195 Notably, while economic considerations were presumed to be distinct from political ones, there is nothing in the memorandum to suggest that the two classifications are polar opposites or are mutually exclusive of each other. 196 Indeed, instead of a dichotomy, the relationship between economic and political considerations may be better depicted as lying on a spectrum, such

191. See Ciocciari, supra note 40, at 369.
194. Shihata, WB and Governance, supra note 186, at 70 (emphasis added) (citations omitted).
195. Id. at 69–70.
196. Id. at 70–71.
that one issue can concurrently have different degrees of being an economic and a political concern. This suggested conceptualization would make it less difficult to justify the Bank’s economic actions and prescriptions that also have some political aspect by virtue of their being affected by, or related to, the manner by which the borrowing state is implementing certain policies—especially with respect to the management of its resources.

Accordingly, while the World Bank was advised against “[e]ntangling itself in the quicksands of the politics of its members,” the cautious advice was qualified by the caveat that, given the Bank’s mandate and experience, it “could help pave the way to domestically inspired political reform by enhancing its efforts to reduce poverty, introducing social safety-nets, supporting education and the flow of knowledge, and helping borrowing countries establish due process and the rule of law through legal and judicial reform.”\textsuperscript{197} As the Bank’s present activities demonstrate, this elbow room has been sufficient to reconcile the political and the economic, or somewhat ease the tension between the two.

2. Purposes

Reading the IBRD Articles, reviewing the organization’s history, and considering the limited use of the amendment procedure, the current scope of the Bank’s operations appears to deviate from the original purposes of the institution. This conundrum prompts discussion about \textit{ultra vires} acts\textsuperscript{198} and the \textit{principle of speciality}.\textsuperscript{199} It is crucial to ask whether the Bank’s member states (\textit{qua} treaty parties to the Articles of Agreement) had given the organization the power to perform such tasks as financing projects geared towards poverty reduction,\textsuperscript{200} human rights promotion,\textsuperscript{201} environmental

\textsuperscript{197} Shihata, \textit{Dynamic Evolution}, supra note 48, at 245.

\textsuperscript{198} See Schmalenbach, \textit{supra} note 137, at 51–52 (“The ultra vires doctrine may have two different perspectives: firstly, the functions of an international organization and, secondly, the powers conferred on the international organization to effectuate these functions.”).

\textsuperscript{199} See Niels M. Blokker, \textit{International Organizations or Institutions, Implied Powers, in Max Planck Encyclopedia of Public International Law} paras. 1–2 (2009) (stating that the principle of speciality is also called the principle of attributed powers, or the principle of conferred powers); \textit{see also} Legality of the Use by a State of Nuclear Weapons in Armed Conflict, Advisory Opinion, 1996 I.C.J. 66, ¶ 25 (July 8); Reparation for the Injuries Suffered in the Service of the United Nations, 1949 I.C.J. 174, ¶¶ 182–83 (April 11).

protection, and legal, judicial, or regulatory reform. The Bank is said to have evolved “from a mere economic development agency to an international organization with a broader mandate . . . essentially through practice and without specific statutory changes, even though the provisions of [its constituent instrument] have been the subject of different interpretations over time, formal and informal, explicit and implicit, which allowed an extension of the activities of the Bank.” This phenomenon is explained by how the World Bank has maximized the power of treaty interpretation, such that it has been able to constructively and creatively stretch, but not break, the political activity prohibition provisions.

The first two paragraphs of Article I of the IBRD Articles capture the major concerns and objectives during the Bretton Woods Conference, which essentially sought to establish an orderly and stable international economic system. These paragraphs mention (i) assistance in the reconstruction and development of territories of members and (ii) promotion of private foreign investment. Positing

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204. Mauro, supra note 123, at 252 (citations omitted).

205. See Cissé, supra note 126, at 86, 92.

206. IBRD Articles, supra note 181, art. 1 (“The purposes of the Bank are:

(i) To assist in the reconstruction and development of territories of members by facilitating the investment of capital for productive purposes, including the restoration of economies destroyed or disrupted by war, the reconversion of productive facilities to peacetime needs and the encouragement of the development of productive facilities and resources in less developed countries.

(ii) To promote private foreign investment by means of guarantees or participations in loans and other investments made by private investors; and when private capital is not available on reasonable terms, to supplement private investment by providing, on suitable conditions, finance for productive purposes out of its own capital, funds raised by it and its other resources.
that the language of Article I is deliberately couched such that its ends and means are integrated, 207 Shihata recasts the Bank’s statutory roles, thus:

(i) The Bank’s first role is that of a facilitator and promoter of investment of capital, especially private foreign investment, for reconstruction and productive purposes in member countries. This role includes (a) facilitation of reconstruction and reconversion of productive facilities to peace time needs, (b) transition and restoration of the economies of “post war countries” (which, under textual and teleological interpretations, should apply to all post-conflict situations, not only to the originally intended participants in World War II, (c) encouragement of the development of productive facilities and resources in less developed countries, and (d) encouragement of international investment for the purpose of growth of balanced trade and the equilibrium of balances of payments. Through such facilitation, promotion and encouragement, the Bank plays its role in the reconstruction of war-affected member countries and the development of the less developed ones.

(ii) The second role of the Bank stated in the Article is that of a financier, i.e. a guarantor of or a participant in “loans and other investments” made by private foreign investors and a direct lender of funds to finance or facilitate productive purposes on suitable conditions “when private capital is not available on reasonable terms.” 208

Remarkably, the text of the IBRD’s Articles, adopted in 1944, remains essentially the same today, in spite of the fact that “[a]mong all international organizations, the World Bank is probably the agency which has experienced the most varied and profound changes and innovations in its activities over the years.” 209 The cumbersome amendment procedure under Article VIII has hardly been used, 210 since it requires 85 percent majority of the voting power. 211

(iii) To promote the long-range balanced growth of international trade and the maintenance of equilibrium in balances of payments by encouraging international investment for the development of the productive resources of members, thereby assisting in raising productivity, the standard of living and conditions of labor in their territories.

(iv) To arrange the loans made or guaranteed by it in relation to international loans through other channels so that the more useful and urgent projects, large and small alike, will be dealt with first.

(v) To conduct its operations with due regard to the effect of international investment on business conditions in the territories of members and, in the immediate postwar years, to assist in bringing about a smooth transition from a wartime to a peacetime economy.

The Bank shall be guided in all its decisions by the purposes set forth above.”).

208. Id. at 230.
210. Id.
The more frequently, yet still sparingly, used procedure is Article IX, which authorizes *auto-interpretation*, i.e., the Bank itself, through its internal organs, performs the interpretation function. Because the provisions pertaining to interpretation are not very elaborate, the Bank’s internal organs have ample discretion and flexibility to subject the IBRD Articles “to frequent interpretations, formal and informal, explicit and implied.”

Significantly, the designated interpreters in the Bank—the Board of Governors and the Executive Directors—are also the same organs that make the policies and decisions and that engage in practices that are theoretically acts of applying the provisions of the Articles. This convergence of roles indicates that, the interpretation function, while it always should be subject to a correct legal approach, is also meant to be responsive to the needs of the institution and its members as a whole . . . [and] should therefore combine strictly sound legal analysis with considerations related to the business exigencies of the organization, where the efficiency of the institution in achieving its purposes and its continued relevance to the needs of its members are important factors to be taken into account.

Hexner attributes the deliberate choice to empower the IFIs’ policy-making organs to interpret their charters to two factors: the technical and complex nature of the subject matter of the IFIs’ operations, and the drafters’ desire to create “a constitutional

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212. IBRD Articles, supra note 181, art. 9, § (a), (b).
213. Shihata, Dynamic Evolution, supra note 48, at 224.
214. IBRD Articles, supra note 181, art. 5, § 2(a) (“All the powers of the Bank shall be vested in the Board of Governors.”); see also id. art. 5, § 2(d) (“The Board of Governors, and the Executive Directors to the extent authorized, may adopt such rules and regulations as may be necessary or appropriate to conduct the business of the Bank.”).
215. Id. art. 5, § 4(a) (“The Executive Directors shall be responsible for the conduct of the general operations of the Bank, and for this purpose, shall exercise all the powers delegated to them by the Board of Governors.”).
216. See Morais, supra note 8, at 67 (pointing out that there is no provision for independent judicial review of the interpretive power vested in the Boards).
218. See Hockett, supra note 154, at 178 (“The drafters ensured flexibility by broadly stating the Fund’s purposes in its first constitutive Article, and by vesting in the Fund itself final authority to interpret its own Articles, effectively insulating Fund decisions from international and domestic judicial review.”).
framework which would not preclude the adjustment of policies to changing political and economic circumstances.”

In similarly providing a legal justification for the supposed mission creep in the IMF, Hockett explicates the necessity of using a teleological approach to interpreting the Fund’s Articles of Agreement, the provisions of which, to recall, are couched in language that is “creatively ambiguous” similar to their counterpart for the Bank, especially with respect to the statement of purposes:

[The Articles’] ready amenability to teleological flexibility is hardly surprising. First of all, the Fund was originally envisaged as a sort of institutionalized medium or forum through or at which trading nations - whose finance ministers actually would set the institution’s course - could collaborate over the long term in responding to global financial challenges that, by their very nature, are not susceptible to detailed anticipation. Secondly, it was lawyers and economists working in tandem who drafted the Articles at Bretton Woods, and the lawyers in particular found it necessary to incorporate a good deal of “creative ambiguity” into the Articles’ final draft in order to provide for future contingencies and to secure agreement by all parties present at the conference.

Thus, the drafters of both IBRD and IMF Articles of Agreement were presumably mindful of possible future changes within the international order that the Bretton Woods institutions would later have to adapt to. In view of the foreseen need to constantly consult with technocrats—i.e., financial and economic experts—when ascertaining the changes’ constitutional implications, the drafters saw fit to retain the interpretive powers within the organizations.

Notably, auto-interpretation may be objectionable, because “an essentially legal question [i.e., treaty interpretation] is decided by a non-legal body which appears to be under no obligation to decide the matter according to legal considerations.” Contrary to this position, this Article submits that the exercise by the Boards of their authority to interpret the Articles of Agreement are legally circumscribed by that very same instrument that provides that all Bank decisions are to be guided by its purposes, as laid down in Article I. Further, actual practice reveals that in matters of interpretation the Executive Directors have extensively relied on the Bank’s General Counsel, who

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220. Hexner, supra note 152, at 344.
221. Hockett, supra note 154, at 177–78 (emphasis added) (citations omitted).
222. See SATO, supra note 157, at 194–95. According to this author, the reason for vesting a power of final interpretation in the IMF and the IBRD themselves is not clear from the records of the Bretton Woods Conference. It appears, however, that the Conference participants felt that recurrent appeals to an external, non-expert tribunal regarding questions of interpretation could impede the IFIs’ work.
223. See ZACKLIN, supra note 219, at 176.
has the legal competence to provide the Board with pertinent legal advice. 225 Indeed, in lieu of formal interpretations, whenever provisions of the Articles needed to be clarified, the General Counsel is consulted and requested to issue a legal opinion, which, although not in itself an authoritative interpretation of the Articles, triggers subsequent practice in the Bank, once it is endorsed or concurred with by the Board of Executive Directors.226

Given these circumstances, it is apropos that the ICJ has recognized that statements by the United Nations’ Legal Counsel are covered by the reference to “organ practice” for purposes of treaty interpretation. 227 This opinion is taken “to indicate that organizational practice might not need to reflect state practice even indirectly.”228 In the Bank’s case, the acknowledged role of the General Counsel is particularly important since the institution has mostly used informal interpretation to adapt.229 Rigo Sureda recounts that during the period beginning in the mid-eighties until the turn of the millennium, the General Counsel has given more opinions than in all the previous years of the Bank, not simply because the institution “has faced more legal issues, but also because of Shihata’s [the then General Counsel] proactive approach to using law as an instrument of change [that thereby resulted in the enhancement of] the role of law in policy-making and in the overall framework of the Bank.”230

Construing “subsequent practice” as the practice of the IO and its organs has been controversial and the subject of much debate, because prior to the issuance of the Certain Expenses of the United Nations231 advisory opinion, the provision has been taken to refer only to the subsequent conduct of the States parties themselves.232 According to the International Law Commission (ILC), three forms of conduct may be deemed relevant under Article 31(3)(b): (a) the

229. Cissé, supra note 126, at 84; Daniel Costelloe & Malgosia Fitzmaurice, Lawmaking by Treaty: Conclusion of Treaties and Evolution of Treaty Regimes in Practice, in RESEARCH HANDBOOK ON THE THEORY AND PRACTICE OF INTERNATIONAL LAWMAKING 111, 122 (Catherine Brölmann & Yannick Radi eds., 2016); see also JOSEPH GOLD, INTERPRETATION: THE IMF AND INTERNATIONAL LAW 169–224 (1996) (suggesting that the IMF has similarly conducted and justified its activities through informal interpretation; authoritative interpretation “may be undesirable because it is too inflexible”).
230. Rigo Sureda, supra note 153, at 12 (citation omitted).
subsequent practice of the parties to constituent instruments; (b) the practice of organs of an international organization; and (c) a combination of practice of organs of the IO and subsequent practice of the parties.  

Notably, the expansive construction of “subsequent practice” creates apprehension relative to legal stability and the legal distinction between amendment and interpretation. Broad interpretive methods can transform an IO’s internal architecture, as well as its external autonomy and capacities vis-à-vis the States parties, who are technically their creators. Arato thus cautiously points out that while it is desirable and sometimes imperative for treaty-based organizations to evolve through informal means, “the specter of consent always lurks in the background,” posing potentially serious legitimacy and accountability challenges.

This Article nevertheless claims that the harms raised by skeptics may be more apparent than real in the World Bank’s case. The expression of consent with respect to the reconstruction and evolution of the World Bank’s mandate can alternatively be inferred from states’ actions in other public international fora (e.g., UN Conferences) wherein they assign the Bank, or IFIs in general, to perform certain functions in an undertaking that is not purely or even predominantly economic in nature. As will be elaborated below, one example is the financing mechanism arranged for certain multilateral environmental agreements.

Furthermore, the member states’ act of signing the 2030 Agenda indicates approval of the IBRD’s transformation, since the document explicitly accords to the Bank and other IFIs a specific role in the pursuit of sustainable development in all its dimensions. Moreover, the continuing ability of the IBRD to obtain funds from global capital and financial markets and the continued replenishment of the IDA funds corroborates the assertion that the wider international

233. ILC Report, supra note 140, at 12–19, ¶¶ 30–51.
234. SATO, supra note 157, at 232.
235. See Arato, supra note 228, at 291.
236. Id. at 292.
237. For example, the World Bank is part of the United Nations inter-agency task team that is in charge of “promot[ing] coordination, coherence and cooperation within the United Nations system on science, technology and innovation-related matters, enhancing synergy and efficiency, . . . [and enhancing] capacity-building initiatives.” See 2030 Agenda, supra note 80.
community supports the World Bank’s apparent operational shift away from strictly economic matters and towards involvement in environmental, human rights, and governance concerns.

Realizing that legal opinions become practically accepted interpretations of the Articles, and as such, could be deemed a source of the Bank’s law, Shihata portrays a meticulous and thoughtful process for preparing those opinions that involves carefully studying the travaux préparatoires (i.e., the drafting and negotiating history of the subject treaty) and according greater attention to the ultimate objective and overall mandate of the Bank. Indeed, through reorganization and the promulgation and application of internal operational rules, complemented by interpretation of the Articles, the World Bank has undergone a “Damascus-like conversion” and effected a fundamental change in its guiding philosophy. It has managed to incorporate into its policy and practice a certain notion of “development” that approximates what is now widely referred to and understood as “sustainable development.”

Any serious attempt at reducing poverty requires sustained economic growth in order to increase productivity and income in developing countries. But there is


240. See Shihata, Dynamic Evolution, supra note 48, at 225.
241. Id.
242. FRENCH, supra note 34, at 183.
243. Id. at 193.
245. See J. SAMUEL BARKIN, INTERNATIONAL ORGANIZATION: THEORIES AND INSTITUTIONS 105–06 (2006); Roberto Dañino, The Legal Aspects of the World Bank’s Work on Human Rights: Some Preliminary Thoughts, in HUMAN RIGHTS AND DEVELOPMENT: TOWARDS MUTUAL REINFORCEMENT 509 (Philip Alston & Mary Robinson eds., 2005); Handl, Legal Mandate, supra note 61; Charles E. Di Leva, International Environmental Law, the World Bank, and International Financial Institutions, in INTERNATIONAL FINANCIAL INSTITUTIONS AND INTERNATIONAL LAW 343 (Daniel D. Bradlow & David B. Hunter eds., 2010); see generally THE WORLD BANK, DEVELOPMENT AND HUMAN RIGHTS: THE ROLE OF THE WORLD BANK (1998). These works generally assume a positive/rosy view of the World Bank’s capacity for reform to respond to the challenges of globalisation and sustainable development, although some of these authors also point out the existing gaps or disparities that have to be closed/addressed to make the Bank’s policies and actions consistent with the sustainable development agenda.
more to development than just economic growth—much more. This report argues that ensuring sustainable development requires attention not just to economic growth but also to environmental and social issues. Unless the transformation of society and the management of the environment are addressed integrally along with economic growth, growth itself will be jeopardized over the longer term.\textsuperscript{246}

Most remarkable about this statement is the point that the World Bank, in contrast to its earlier position, already recognizes in explicit terms that economic growth is a necessary but not a sufficient condition for sustainable development, inasmuch as the environmental and social issues involved in the development process have to be taken into account as well.

D. Discretion to Evolve and Expand

Rebutting the first strand of the mission creep claim (absolute objection against any expansion and evolution of mandate), the previous subpart explained that the World Bank has legal authority to reconstruct itself and interpret the economic-political dichotomy in a purposive and evolutionary manner. Now it is fitting to ascertain the extent and reasonableness of the Bank’s exercise of its discretion to effect the evolution and expansion of its mandate. This subpart thus examines the Bank’s attitude and progress on three crucial sustainability-related areas that the Bank has included in its mandate in varying degrees, in spite of the fact that “[n]o one in 1944 might have thought specifically of a role for the Bank in institutional development, human development or the environment.”\textsuperscript{247}

The present discussion addresses the second strand of the mission creep claim regarding the appropriate matters, on top of economic factors, for the Bank to consider in its decisions and include in its operations. This Article argues that the Bank can, and should, continue to integrate non-economic issues into its policies and operations if it were to remain relevant in this age of sustainable development.

1. Environment

The World Bank’s acceptance of the increasing relevance of the environment to its development work and the corresponding expansion of its activities into this area are broadly attributed\textsuperscript{248} to two factors: (i) lessons learned from Bank-financed projects that showed how both economic growth (pursued without early and due


\textsuperscript{247} Shihata, Dynamic Evolution, supra note 48, at 231.

\textsuperscript{248} Shihata, WB and Environment, supra note 202 at 40.
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recognition of potential impact on the environment) and poverty (i.e., the lack or deficiency of development) can both correlate with environmental degradation; and (ii) growth in the capacity of the Bank, as “the premier development finance institution,” to share knowledge and technical assistance “to countries in the preparation of [their own] environmental action plans and strategies.”

The threshold legal question to be grappled with is whether environmental concerns are sufficiently economic in character for them to be included in the Bank’s decisionmaking processes and operations. This question entails an interpretation of Article IV, Section 10. Applying the teleological-evolutionary approach, the term “economic” would encompass environmental issues, insofar as the Bank’s experience has shown that the failure to account for environmental impact could delay or even halt development projects, thereby resulting in inefficiency and loss of resources. The World Bank has also taken cognizance of advances in economic research that identified critical correlations between poverty and environmental protection and degradation.

As a policy matter, the Bank should consider and address environmental concerns, because the harms resulting from the failure or refusal to do so could impair the Bank’s legitimacy, especially among developing states, and might call into question its ability and fitness to perform a developmental mandate. Additionally, the Bank should take a positive role in environmental protection, given its unique, influential position in the global policy arena and its enhanced financial and technical capacity regarding the conduct of environmental assessments, which is a requirement both under loan agreements governing development projects and, more generally, under international law, when states pursue activities that might adversely affect a shared resource or cause transboundary environmental harm.

249. Id. at 39–40.


251. See WORLD BANK, OPERATIONAL POLICY 4.01 – ENVIRONMENTAL ASSESSMENT ¶1 (1999) (“The Bank requires environmental assessment (EA) of projects proposed for Bank financing to help ensure that they are environmentally sound and sustainable, and thus to improve decision making.”).

The Bank’s pioneering efforts towards environmental protection were described in McNamara’s address to the UNCHE (Stockholm) in 1972. He acknowledged the “dilemma of development versus growth” and affirmed that continued economic growth is interlocked with environmental protection. The conclusions of the 1972 Stockholm Conference were said to be material to the findings of the Brandt Commission, which “indicated that protection of the environment could no longer be seen as an obstacle to development but rather as an essential aspect of it.” Remarkably, the Brundtland Commission recognized the World Bank’s “significant lead in reorienting its lending programmes to a much higher sensitivity to environmental concerns and to support for sustainable development” but further commented that such promising beginning requires fundamental commitment to sustainable development and “transformation of its internal structure and processes so as to ensure [the institution’s] capacity to carry this [commitment] out.”

Moreover, there eventually emerged a greater understanding of the complex interrelationship among poverty, development, and environmental degradation and protection that facilitated the inclusion of environmental concerns in the Bank’s mandate. In this regard, the Brundtland Commission’s statement is noteworthy: “Economy is not just about the production of wealth, and ecology is not just about the protection of nature; they are both...
equally relevant for improving the lot of humankind.” From the Bank’s perspective, the improvement of human welfare is operationalized through poverty eradication, which is among its primary objectives.

Similar to ordinary financial institutions, the Bank sought to resolve the project-related environmental problems—unsustainable natural resources use, failure to provide sufficient public access to information, stifling of local community participation in project design and implementation—by executing legal instruments, which include conditionalities, such as a commitment to conduct environmental impact assessment and to undertake certain mitigation measures that are legally binding on the borrowing countries.

By the nineties, the further “greening” of the Bank could be gleaned from the substantial increase in environmental professionals on staff, its being the first IFI with a dedicated environmental unit, and the establishment of the Global Environment Facility (GEF).

The Bank’s engagement with the environment has extended beyond its own projects, through its participation in “multilateral efforts to mobilize resources for the protection of the global environment and to ensure efficient utilization of such resources.”

One such effort is the GEF, which was launched in 1991 pursuant to a resolution by the IBRD Executive Directors, and was subsequently restructured to its present form as “an international partnership of 183 countries, international institutions, civil society

260. WORLD COMMISSION ON ENVIRONMENT AND DEVELOPMENT, supra note 9, at 36, ¶ 42.
261. See Sustainable Development Goals (SDGs) and The 2030 Agenda, THE WORLD BANK, http://www.worldbank.org/en/programs/sdgs-2030-agenda (last visited Oct. 23, 2017) [https://perma.cc/8GR3-3T98] (archived Jan. 22, 2018) (“The SDGs are aligned with the World Bank Group’s twin goals of ending extreme poverty and boosting shared prosperity, and the WBG is working with client countries to deliver on the 2030 agenda through three critical areas: (i) finance, (ii) data, and (iii) implementation – supporting country-led and country-owned policies to attain the SDGs.”); see also G.A. Res. 66/288, annex, The Future We Want, ¶ 2 (July 27, 2012) (“Poverty eradication is the greatest global challenge facing the world today and an indispensable requirement for sustainable development. In this regard, we are committed to freeing humanity from poverty and hunger as a matter of urgency.”).
263. FRENCH, supra note 34, at 189.
264. Di Leva, supra note 245, at 345; Park, supra note 59, at 108.
265. Shihata, WB and Environment, supra note 202, at 28; see Di Leva, supra note 245, at 373–84.
organizations, and the private sector that addresses global environmental issues.”

The GEF serves as a financial mechanism to various multilateral environmental agreements, including the Convention on Biological Diversity (CBD) and the United Nations Framework Convention on Climate Change (UNFCC).

To clarify, while the Bank is not a party to any international environmental treaty and accordingly bears no direct legal obligation, its involvement in multilateral environmental efforts such as the GEF, as well as its own internal policies forbidding the financing of projects that would contravene a member country’s international environmental obligations, can serve as the basis of a duty to promote and pursue environmental objectives.

Notably, disputes and doubts remain about the origins and sincerity of the Bank’s “greening” process. However, it is presently more important to address the interrelated challenges of “translating the sustainable development paradigm into specific policies and concrete, verifiable or measurable operational actions” and of “recognizing the shrinking scope of MDB autonomy in what is undeniably an all-encompassing process of global policy adjustment.”

Critical remarks against the Bank’s environment-related operations and genuine concerns about the adverse effects of its financed projects are far from trivial. Nonetheless, the expansion and evolution of the Bank’s mandate to “include new areas such as the environment, sustainable development, governance, democracy, cultural development, post-conflict reconstruction, programmes to

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271. Handl, Legal Mandate, supra note 61, at 645.
combat corruption and, of course, human rights, issues" has, by and large, been a boon rather than a bane. One positive, albeit possibly unintentional, effect of this mission reconstruction is the fact that its expanded mandate has somehow encouraged the Bank to strive to make itself more transparent and accountable—that is, conform to the same good governance framework that it espouses to the borrowing countries—through mechanisms and organs that observe and embody the principles of Global Administrative Law (GAL).  

2. Governance

The World Bank’s recognition of the relevance of “governance” in its work owes much to a legal opinion prepared by Shihata as General Counsel. Here, the legal issue involves teasing out and isolating the economic aspects of an inherently political matter, namely, the manner by which a state manages and allocates its resources. Mindful of the existence of the political activity prohibition, and aware of the tendency for governance issues to make more prominent the overlap between politics and economics, Shihata limited the Bank’s work to those aspects of governance that relate to “good order” and the “rule of law,” i.e., the existence of “abstract rules which are actually applied and on functioning institutions which ensure the appropriate application of such rules.”

Shihata elaborated in a legal opinion that the prohibition pertains only to the Bank’s interference with its member countries’ partisan politics or its being “influenced by a member’s political ideology or character or form of government.” On the other hand, the Bank could legitimately be involved in matters “political” (a la Mauro, supra note 123, at 260.

272. Mauro, supra note 123, at 260.
276. Sureda, supra note 153, at 15.
“political economy”) in the sense of “belonging to the state or body of citizens; its government and policy.”

Accordingly, “governance” is essentially “the manner in which a community is managed and directed, including the making and administration of policy in matters of political control as well as in such economic issues as may be relevant to the management of the community’s resources.” The Bank views governance not only as an end in and of itself, but also as a means “of correcting problems related to development that impede economic progress” and “of improving aid effectiveness and contributing to economic performance.” Consistent with this understanding, the Bank’s activities have been focused on “the degree and quality of the state’s intervention in running the economy” and on other means to enhance the country’s investment prospects.

From a policy perspective, governance matters have to be considered by the Bank, because the existence and proper functioning of a state’s institutions affect not only the implementation of development projects, but the overall attractiveness of the country as an investment destination as well. Good governance encapsulates the various factors calculated in determining the cost of doing business. The emphasis on the rule of law is intimately connected to the importance that the Bank accords to the stability and predictability of the business environment within a State, as well as to the necessity of social discipline for the success of any process of economic reform.

To recall, the CDF presents a “holistic approach to the structural, social and human aspects of development” and includes in the structural aspect the establishment of a good and clean government. Wolfensohn is the first President to expressly acknowledge the relevance of corruption in the Bank’s mandate and to call for an exploration of the relationship between good governance and anti-corruption. Although corruption is a political issue, the

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278. Id. at 79–80.
281. See *The World Bank, About Us, DOING BUS.* https://www.doingbusiness.org/about-us (last visited Feb. 1, 2018)
Bank is not precluded from addressing it, because it is as much a political animal as it is a development institution, being “a coalition of most of the countries of the world,” and because “explicit concern with corruption is consistent with a focus on economic rationality.”

Similar to the case of protecting the natural environment, the Bank used loan conditionality to ensure the project implementation capacity of borrowing countries. Recognizing that “the policy environment [of a country] is as important to inducing growth and development, if not more so, as the physical and institutional framework in inducing growth and development,” the Bank “concentrated on institutional changes in macroeconomic and financial management, sectoral restructuring and policy reforms, enhancement of public sector efficiency and constraints in public sector management.”

As a final point, it bears noting that, according to another former Bank General Counsel, Ana Palacio, governance is indispensable to sustainable development, and “[h]uman rights offer a clear conceptual and legal framework for connecting the supply and demand sides of governance in terms of its basic correlative notion of rights and duties.” Palacio adds that, given the common legal principles shared by human rights and good governance, the integration of human rights into the Bank’s work “is an important element in [the] efforts to step up the Bank’s promotion of good governance and its global fight against corruption.”

Governance, or more accurately good governance, has come to be associated with development, and equally, with upholding human rights. Roberto Dañino, Palacio’s predecessor, explains the interrelationship among these three goals and how the Bank’s evolving mandate relate to the MDGs:

All eight MDGs involve more than one human right. One concept that the Bank has taken a leading role in developing is governance. Governance itself has a strong human rights content; indeed, this is an area in which our research has found a rich set of connections in charting the work of the Bank to key international human rights provisions. Governance incorporates transparency, accountability, and a predictable legal framework.

286. Shihata, WB and Governance, supra note 186, at 59.
287. Id. (citations omitted).
289. Id. at 37.
All of these principles are clearly linked to the rule of law and its inherent notions of fairness and social justice.  

Dañino further points out that indispensable to the rule of law are factors, such as public participation, that international human rights instruments seek to promote and protect. Nevertheless, the human rights component of governance has been muted or remained latent, possibly because of what one author, who did an ethnographic study of the Bank, refers to as the “human rights taboo” within the organization, meaning, human rights are not only omitted from the Bank’s official policies but are “also not openly discussed [by employees] within many parts of the institution.”

In sum, given the operational difficulties encountered by the Bank in working with corrupt or inept governments, the development process became more political and the political process more economic, since the broader or thicker concept of development—now more commonly referred to as “sustainable development” —“is based on so many considerations [including the notion of good governance] that may not have a direct economic effect but may affect the success of a project.” The necessity of recognizing governance concerns is additionally highlighted by recalling the fact that among the reasons behind the disastrous consequences of some Bank activities in the developing world is the lack of understanding about the human and societal concerns, as well as the broader sociopolitical and cultural context, in these countries within which the projects and programs were being implemented.

3. Human Rights

Compared to the two areas previously discussed, the World Bank’s engagement with human rights issues appears more fraught. Specifically with regard to civil and political rights, the legal

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291. See id. at 24.
292. SARFATY, supra note 44, at 108.
293. See Julian Agyeeman, Robert D. Bullard & Bob Evans, Joined-up Thinking: Bringing Together Sustainability, Environmental Justice and Equity, in JUST SUSTAINABILITIES: DEVELOPMENT IN AN UNEQUAL WORLD 1, 6 (Julian Agyeeman, Robert D. Bullard & Bob Evans eds., 2002). The authors liken the concept of sustainable development to democracy and freedom, which are “overarching societal values,” whose interpretation and actualisation are part of sovereign (does not exclusively pertain to the State) discretion: “Sustainability is at its very heart a political rather than a technical construct. It represents a belief in the need for societies to adopt more sustainable patterns of living, and it is both a focus for political mobilization by individuals and organized interests, and a policy goal for governments.” Id.
295. See DARROW, supra note 201, at 14–19 (describing the historical trends in “development thinking” at the World Bank and the impact on developing nations).
justification is slightly more difficult to formulate, because the immediate legal issue to arise is whether human rights are considered political matters that fall within the political activity prohibition. Resolution of this issue entails shifting perspectives, and viewing the economic factors and the political ones as lying on a spectrum, instead of being in a dichotomous relationship. The concept of human rights necessarily has a political or public component insofar as it refers to the relationship between the state and the individual. At the same time, however, experience and research have shown that how a government treats its citizens carries an impact on the country’s investment climate, and, as such, should properly be within the Bank’s mandate to consider and address.

This Article argues that the Bank’s involvement with human rights concerns is justified by the fact that realization of human rights—including some civil and political rights—is intimately related to the achievement of the SDGs, most of which have associated or corresponding human rights at stake. Further, 

poverty eradication, which is the centerpiece of the Bank’s self-proclaimed mission, affects the pursuit of sustainable development and implicates several rights, including the right to life; the right to an adequate standard of living; the right to access to information; the right to equality and non-discrimination; and the right of all peoples to freely dispose of their natural wealth and resources. Indeed, the 2030 Agenda proclaims that the seventeen SDGs and 169 targets are people-centered and “seek to realize the human rights of all,” and a preliminary assessment of the SDGs concludes that “[t]he SDGs reflect human rights in some significant ways, and certainly to a greater extent than the MDGs.”

Although not stated in his official capacity, Shihata earlier echoed and endorsed the standard Bank view about the purported distinction between economic and social rights, on the one hand, and civil and political rights, on the other, pointing out that “[t]he Bank does not interfere [and refuses to do so] in the political affairs of its members, including their positions on political rights because it falls outside the scope of the Bank’s authority as an international financial institution.”

About two decades after Shihata made this statement, Dañino expressed an unofficial view that “human rights are at the very core of the World Bank’s mandate”:

Social equity, at the heart of my conception of poverty alleviation [which has by now become a key element of the Bank’s mission], includes fighting inequality, giving the poor and marginalized a voice (i.e., empowerment), freeing the poor from hunger and fear, and providing access to justice. Social equity has, therefore, an obvious human rights content. In our interpretation of the Articles, we must therefore maintain a focus on the purposes of Article I and the overall mission of the Bank.

Referring to studies about the correlation between substantial violations of civil and political rights and slower economic growth, Dañino categorically rejects a stark distinction “between economic,
social, and cultural rights on the one hand, and civil and political rights on the other,” and thereby concludes that the World Bank “can and should take into account human rights because, given the way international law has evolved with respect to concepts of sovereignty and interference, the Bank would not run afoul of the political prohibitions of the Articles by taking human rights into account.”

Indeed, development and human rights are said to “have evolved towards similar goals, albeit along parallel tracks” and efforts for their achievement have a mutually reinforcing relationship. Interestingly, while he was General Counsel, Dañino wrote a “note” entitled Legal Opinion on Human Rights and the Work of the World Bank, which concluded, “The Articles of Agreement permit, and in some cases require, the Bank to recognize the human rights dimensions of its development policies and activities, since it is now evident that human rights are an intrinsic part of the Bank’s mission.”

The IBRD Articles and the legal limits provided therein can indeed be interpreted in a purpose-oriented and dynamic manner to rationalize the IFI’s consideration of human rights issues:

We must work within the legal framework . . . to tackle the challenges presented by human rights issues as they evolve. There are also institutional limits, for the Bank is a specialized financial agency . . . .

The Bank also has finite capacity and limited resources. For now at least, I believe the Bank should embrace the centrality of human rights in its work instead of being divided by the issue of whether to adopt a rights-based approach to development.

As a development institution, the Bank must also ensure that it works in a manner that does not inflict a double punishment on the people of its client countries by turning its back on them because of the human rights record of their governments. It should also be clear that the Bank’s role is not that of enforcer . . . .The Bank’s role is a collaborative one in the implementation of its Member Countries’ human rights obligations.

The role is also complementary to that of our UN partners entrusted with the job of globally respecting, protecting, promoting, and fulfilling human rights.

This quotation reveals that while Dañino vigorously insists on a closer link between human rights and the World Bank’s mandate, he also recognizes that the Bank is not an enforcer (a responsibility left for other UN agencies to perform), and it has the limited role of

306. Id. at 23–24.
308. Palacio, supra note 288, at 36.
collaborating with its member countries in the implementation of their human rights obligations. 310

This position addresses the criticism that ascribing normative human rights roles to the Bretton Woods institutions constitutes an “unauthorised expansion of their institutional mandates” and “neglects the BWIs’ [Bretton Woods Institutions] own complicity in human rights violations in member states.” 311 Rather, the World Bank and other IFIs are envisioned to be enablers, more specifically, providers of institutional and resource support so as to allow the states, the primary duty-holders, to craft their respective economic, environmental, and social policies, consistent with their human rights obligations.

In any event, the increasing fluidity between the economic and the political spheres has gradually paved the way for the World Bank to further stretch the limits of its mandate and advocate for the protection of civil and political rights and good governance. 312 Shihata later acknowledged that “a guarantee of human rights protection does not merely relate to development but is central to the development process” 313 and initiatives in poverty alleviation, the environment, and the status of women are permissible under the Articles, if what is “economic” is broadly and teleologically interpreted. 314 Indeed, “the gradual emergence of a ‘right-based approach to development’ and the general awareness of the necessary interdependence between economic welfare and the effective recognition of human rights now prevent a restrictive interpretation of the Bank’s mandate.” 315

Accordingly, while IFIs are not parties to human rights treaties, it is strategic to use these agreements as “solid and compelling legal foundation[s] for the consideration of human rights in development,” because they embody the “states’ consent in their voluntarily undertaken legal commitments,” and thus provide the IFIs with two things: legitimacy and protection against charges of political interference, to the extent that the IFIs’ development work would assist States in complying with their own commitments. 316 Thomas Buergenthal corroborates: “[I]nternational human rights agreements

310. Id. at 25.
315. Mauro, supra note 123, at 271.
316. McInerney-Lankford, supra note 307, at 263 (internal quotations omitted).
permit institutions such as the World Bank to depoliticize human rights and to rely on and resort to international human rights law in articulating basic economic development standards.\textsuperscript{317}

To conclude, the IBRD Articles, which provide the Bank with legal authority to evolve and expand, have so far been interpreted as flexibly as is lawfully permitted under the Vienna Convention. This Article further asserts that from a policy perspective, the Bank's discretion as to the extent of such evolution and expansion into non-economic areas has been reasonably exercised, in keeping with its standing and capabilities\textsuperscript{318} and in step with the changing needs of its clients, i.e., the borrowing states and their peoples.\textsuperscript{319}

The narrative laid down in the earlier Parts, however, also shows that the shifts in the Bank's mindset, method, and concentration have been somewhat tainted by hesitation and have sometimes been too piecemeal and protracted.\textsuperscript{320} The Bank has yet to fully embrace its role in the fulfilment of the international community's common objectives and policies, which, at the moment, are centered in the concept of sustainable development. Therefore, while it could be credited for being responsive or reactive to changes and problems related to the pursuit of development, it seems to still lack sufficient foresight of, and sensitivity to, the broader perspectives of the multiple participants in the international community.

\begin{itemize}
  \item \textsuperscript{317} Buergenthal, supra note 126, at 100.
  \item \textsuperscript{318} See Morais, supra note 8, at 68. While there may be some merit to the criticisms about the Bank becoming less effective because it has taken on too many agendas, Morais argues that there are reasons why the international community has summoned MDBs to take on these tasks, to wit: "(a) they are universal organizations that are deeply involved and experienced in addressing development issues with their member countries and also (b) they have tremendous financial influence in persuading member countries to undertake needed reforms in the context of their own operations." Id.
  \item \textsuperscript{319} A 2014 study finds that the recipients of IBRD’s cumulative lending from 1945 to 2013 are from Asia (India; Indonesia; China; Turkey; South Korea; Philippines) and Latin America (Brazil; Mexico; Argentina; Colombia), while the IDA’s cumulative lending from the time of its creation in 1960 to 2013 was made in favor of mostly African countries. These data only partly illustrate how the IBRD has eventually come to cater to the middle-income countries, while the IDA has focused on the least-developed ones. See Kevin Currey, Some Evolving Trends at the World Bank: Lending, Funding, Staffing (Briefing Note) (2014), http://www.bankinformationcenter.org/wp-content/uploads/2014/07/Some-Evolving-Trends-at-the-World-Bank.pdf (last visited Feb. 1, 2018) [https://perma.cc/6XTM-8HUT] (archived Jan. 20, 2018).
  \item \textsuperscript{320} See Ascher, supra note 44, at 420 (Although the World Bank has reoriented its development efforts, “there has been significant resistance” to change priorities and to adopt “the practices required to pursue new strategies. Irrespective of the merits of any of the proposed departures, it is generally accepted that the Bank only changes its orientations slowly”).
\end{itemize}
V. MANAGING DISCRETION AND ACCOUNTING FOR INTERNATIONAL COMMUNITY EXPECTATIONS: A PROPOSED INTERPRETIVE FRAMEWORK

Despite the persistence of criticisms against the Bank, very few critics go so far as to seriously suggest its abolition.\(^{321}\) It can thus be reasonably inferred that there continues to be a need for an institution such as the World Bank, although perhaps this need is more pronounced for some countries than others. As human beings continue to live in a globalized world, as well as to appreciate their interdependence with one another and with the natural environment, it becomes even more imperative to have an international organization that would pool and sometimes steer the cooperative efforts of all who have a stake in the pursuit of global objectives such as the SDGs and also serve as a venue for discussion.\(^{322}\) It is likewise important that such institution has ample autonomy and discretion to implement and manage the collective will.\(^{323}\)

The preceding Parts of this Article sought to establish that the evolution of the Bank’s mandate is both legally defensible and normatively desirable. Recognizing, however, that mission reconstruction in the Bank cannot be entirely untrammelled, the

\(^{321}\) See Davison Budhoo, *IMF/World Bank Wreak Havoc on Third World, in 50 YEARS IS ENOUGH: THE CASE AGAINST THE WORLD BANK AND THE INTERNATIONAL MONETARY FUND* 20, 22–23 (Kevin Danaher ed., 1994) (describing the structural adjustment programs sponsored by the IMF and the World Bank as “genocidal policies,” the author calls for a halt to such policies, and offers three possible remedies, one of which is the abolition of the institutions. However, Budhoo himself recognizes that this proposal is impossible and unrealistic. Thus, he appears to ultimately lean towards the third possible solution “for peoples and countries to force change on the institutions by confronting them with irrefutable evidence of their gross injustices, inequities and contradictions”); HERITAGE FOUND., BACKGROUNDER NO. 1082, *THE WORLD BANK AND ECONOMIC GROWTH: 50 YEARS OF FAILURE* 1–2 (1996), http://www.heritage.org/trade/report/the-world-bank-and-economic-growth-50-years-failure (last visited Feb. 1, 2018) [https://perma.cc/GD6J-R2E8] (archived Jan. 20, 2018) (Although highly critical of the World Bank’s accomplishments, or lack thereof, the author argues for the United States’ withdrawal of financial support for the Bank, but does not make explicit assertions for the abolition of the said institution).

\(^{322}\) The importance that this article places on IOs stems from the recognition of the transnational nature of the present-day environmental, economic, and social problems, but it does not preclude the centrality of the State in finding and executing solutions. See Daniel C. Esty, *Economic Integration and the Environment, in THE GLOBAL ENVIRONMENT: INSTITUTIONS, LAW AND POLICY* 190, 204–05 (Norman J. Vig & Regina S. Axelrod eds., 1999) (“The fundamental challenge is to manage interdependence on multiple levels, representing both shared natural resources and a common economic destiny. Governance in this context requires working across divergent priorities... Sustainable development has emerged as the shorthand way of refining a systems-oriented policy approach that considers these conflicting needs simultaneously.”).

\(^{323}\) See French, supra note 1, at 68 (“Implementation of sustainable development will require international organisations . . . [to] be able to both ‘absorb’ the differences and disagreements between States, and be able to manage them effectively.”).
The recommended approach to interpreting the IBRD Articles entails applying prudently, though no less holistically, the co-equal elements of Article 31’s general rule of treaty interpretation. The VCLT general rule is then complemented by a dynamic (evolutionary) approach, as understood through the lens of the New Haven School. In general, the New Haven School has three central features “that are deeply embedded in the contemporary field of international law: [i] a resistance to the realism that once gripped the study of world politics, [ii] an interdisciplinary approach to international law, and [iii] attention to policy and policymaking.” The latter is most relevant to this Article.

Significantly, the School’s characteristic emphasis on policy-oriented jurisprudence extends to treaty interpretation, thus: “The main objective of [a treaty] is to project a common policy with the

324. See W. Michael Reisman, International Lawmaking: A Process of Communication, The Harold D. Lasswell Memorial Lecture (Apr. 24, 1981), in 75 AM. SOCY INT’L L. PROC. 101, 120 (1981) (“Even where norms are known with precision, their application in concrete cases is always a separate matter, requiring detailed consideration of the context, a reappraisal of the invoked norms for the conformity of the consequences of their application in the given context with community goals, and hence their interpretation, supplementation, and policing by appliers so that, in each case, they contribute optimally to basic principles of human dignity.”).


326. Bradlow & Grossman, supra note 312, at 43–44.

327. GARDENER, supra note 139, at 222.

328. Fitzmaurice, Interpretation Part II, supra note 156, at 29.


respect of future distribution of values and the purpose of interpretation is to discern the shared expectations of the parties, which may be adjusted by the interpreter to the goals of public order, including human dignity.”

Its intellectual commitment to the pursuit and realization of normative values—such as the pursuit and realization of human dignity—is another feature of the New Haven School that influences the broader underlying claim of this Article regarding the positive role of international law in the pursuit and realization of sustainable development.

Under the New Haven School, international agreements, including their interpretation, are viewed as instruments for the realization of the optimum world order, meaning, a treaty’s main objective is the projection of a common policy regarding the future distribution of values. The aim of treaty interpretation then is ascertaining the treaty parties’ shared intent, which is to be complemented, and in some instances, may be supplanted, by the basic norms of world legal order or the international community’s expectations and demands.

The understanding of the term “development” is the primary source of flexibility of the Bank’s mandate. It carries a yet unexplored potential to justify the further diversification and expansion of the Bank’s activities in order for it to move closer to the ideal sustainable development agency and to adequately respond to criticisms that it has not been doing enough to carry out its self-proclaimed mission to eradicate extreme poverty and ensure shared prosperity. Consequently, although the teleological approach is not the focus of

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332. See Harold Hongju Koh, Commentary, Is There a “New” New Haven School of International Law?, 32 Yale J. Int’l L. 359, 562–64 (2007). Koh identifies five basic intellectual commitments for which the New Haven School is notable: (i) interdisciplinarity; (ii) study of process; (iii) promotion of normative values; (iv) connecting law and policy; and (v) recognition of the emerging importance of transnational law. With regard to the third, he expounds: “By treating international law as more than just a body of rules, the New Haven School committed itself not simply to a study of bare process, but more fundamentally, to an examination of a process of authoritative decision-making dedicated to promoting a set of normative values.” Id.

333. Fitzmaurice, Interpretation Part II, supra note 156, at 27.


335. See, e.g., Redclift, supra note 71, at 403 (commending the development agencies’ current environmental discourse as an improvement on the past, but lamenting that it “fails to take adequate account of both international (structural) and cross-cultural factors in sustainable development”).
the present proposal, the analytical starting point is still Article I, which enumerates the Bank’s Purposes.336

The World Bank has hinged the use of a teleological-evolutionary approach on the object and purpose of the IBRD Articles, pursuant to Article 31(1) of the VCLT. This Article’s proposal, on the other hand, (i) highlights the context of the treaty terms; (ii) relates it to the subsequent practice of the Bank’s organs, in accordance with Article 31(3) and relevant ICJ jurisprudence; and (iii) construes “context” of the constitutive treaty to include the views and discussions on development within the academy and various international conferences. In a way, therefore, the proposed framework simply broadens the contextual analysis. The relevance of the New Haven Approach is detailed in the succeeding paragraphs.

Under the prescribed approach, the need to elaborate and contextualize arises from “the frailties of language and other communication,” which sometimes result in parties being unable to fully express their shared expectations in the treaty text.337 This weakness makes it necessary to remedy those inevitable gaps and ambiguities in shared expectation “by a disciplined recourse to community prescriptions designed to regulate activities of the particular kind embodied in the agreement or, in the absence of such prescriptions, to the more fundamental, authoritatively postulated policies of the larger community.”338

In addition to this “gap-filling” function, the international community’s expectations and demands are material in guiding the interpreter towards an interpretation that adheres to the optimum world public order that “include[s] the prerequisites of minimum [public] order and, possibly, some standards of human rights.”339 This function, which McDougal et al. refer to as the task of integration, “requires the rejection, adaptation or reconciliation of even the most explicit shared expectations when those expectations contravene overriding community policies.”340 Integration additionally demands “a careful inventory and assessment of the values being sought in the . . . agreement and the relation of these values to any superseding interests of the larger community as expressed in its more fundamental policies.”341

According to Malgosia Fitzmaurice, “the general approach of the New Haven School to interpretation is particularly befitting as a theoretical background for the dynamic interpretation of [a regional

336. Supra note 261.
337. McDougal, Lasswell & Miller, supra note 334, at xxvii.
338. Id. at xxxi–xxxii.
341. Id. at xxxi.
convention on human rights], where the role of the adjudicator in the interpretation of the Convention is to achieve the overarching goal of the creation of a fundamental moral order for the States Parties to the Convention, which overrides to a certain extent particular and individual intentions of the Parties to the [human rights treaty] and their consent.  

The New Haven Approach thus corresponds to Michel Virally’s conception of international development law that “sought to rewrite the principles of public international law . . . [and] reinterpret them toward the overall goal of fostering development and a more just world order.”

Indeed, the promotion and protection of human dignity are among the ultimate goals of the optimum world public order. Two implications for treaty interpretation arise from this statement: first, the shared expectations of the parties to an international agreement must be upheld, because “to defend the dignity of man is to respect his choices and not, save for overriding common interest, to impose the choices of others upon him”; and second, the treaty parties’ shared expectations should be adjusted (or overridden) when the realization of human dignity conflicts with treaty parties’ expectations. Based on the foregoing, admittedly critical to the application of the New Haven Approach in interpreting the IBRD Articles of Agreement, is the showing that basic community expectations do accept the concept of sustainable development as a broader version of economic development and support its pursuit. It is for this purpose that Part III provided a reasonably comprehensive and careful discussion of how various actors comprising the international community have been formulating, shaping, invoking, applying, and appraising the concept of sustainable development. In line with the objectives of this Article, the instrumental role of the World Bank in facilitating and participating in these actions was highlighted.

342. Fitzmaurice, Interpretation Part II, supra note 156, at 29.
343. DANN, supra note 26, at 5.
345. Fitzmaurice, Interpretation Part II, supra note 156, at 27 (citing McDougal, Lasswell & Miller, supra note 334, at 40–41).
346. In his Separate Opinion in the Gabčíkovo-Nagymaros case, Vice-President Weeramantry plainly yet profoundly describes the place of the principle of sustainable development in international law through its importance in resolving tensions between two established rights, namely, development and environmental protection: “The principle of sustainable development is thus a part of modern international law by reason not only of its inescapable logical necessity, but also by reason of its wide and general acceptance by the global community.” Case Concerning Gabčíkovo-Nagymaros Project, supra note 71.
Indeed, the international community has reached consensus\(^\text{347}\) on the basic dimensions of sustainable development (economic, environmental, social) to be integrated, or at least on the imperative and desire to pursue such process.\(^\text{348}\) The international community has likewise deemed sustainability to be “a central pillar of [twenty-first century] global cooperation.”\(^\text{349}\) This consensus about sustainable development implies, among other things, the international community’s abandonment of the traditional naked pursuit of economic growth without regard for the environment and society. More specifically, in the case of the World Bank, the wide acceptance of sustainable development should mean that the development projects it supports can no longer be solely fixated on the mere increase of incomes. Potentially detrimental effects such as environmental degradation or breakdown of social institutions also have to be taken into account and avoided as much as possible.

The endorsement of sustainability as part of the global agenda thus carries implications for the interpretation of the World Bank’s constitutive treaty.

First, in this present age of sustainable development, the political activity prohibition in the IBRD Articles would require a less rigid interpretation of the economic (non-political) matters that the

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\(^{347}\) See Barral, supra note 71, at 380; Beyerlin, supra note 80, at 111–12. Barral explains that the international community’s wide support for sustainable development is evidenced by the fact that its “conception, articulation, and dissemination . . . on the international plane” occurred in a span of only 20 to 30 years, which is a relatively short time in international law terms. Sustainable development has “also found its way into a plethora of Declarations of States, Resolutions of International Organizations, and, crucially, international Treaties.” Beyerlin adds that the concept provides political guidance for States to undertake and strengthen environmental protection, as well functions as a de facto constraint to environmental decisionmaking.

\(^{348}\) See Fox & Brown, supra note 123, at 531–32 (emphasis in original); Inga T. Winkler & Carmel Williams, The Sustainable Development Goals and Human Rights: A Critical Early Review, 21 INT’L J. HUM. RTS. 1023, 1026 (2017). Fox and Brown assert that although the concept of sustainable development and its legitimacy will continue to be ideologically contested, “the dominant international policy discourse [at present] has accepted sustainable development as a goal,” and as a result, the debate regarding the environment-development linkage has shifted significantly to issues about “what counts as an acceptable environmental assessment, reasonable access to project information, and appropriate grassroots participation.” Meanwhile, Winkler and Williams portray the SDGs as the result of political negotiations and compromise that represent a global commitment inasmuch as it has been negotiated and adopted by all UN member states.

I address the aforementioned project-specific, “on-the-ground” sustainability issues in a separate chapter of my current project (doctoral dissertation) by systematically examining the docket of the Inspection Panel and identifying a few landmark and/or representative cases to illustrate how independent accountability mechanisms address sustainable development concerns, as framed and argued by the persons directly affected by development projects.

\(^{349}\) Esty, supra note 82, at 1.
World Bank can lawfully and legitimately include in its mandate. To recall, this treaty provision has previously been construed as requiring a strict dichotomy between political and economic matters. Prior experiences illustrate, however, that such interpretation has led the Bank to disregard, and sometimes even indirectly support, the human rights violations associated with development projects or perpetrated by corrupt leaders of some borrowing countries.\textsuperscript{350} There can thus be an inconsistency between upholding human dignity and maintaining a rigid political-economic divide. Therefore, if the IBRD’s constitutive treaty were to be treated as an instrument for realizing the optimum world order—as this Article espouses—the subject prohibitive provision has to be interpreted in a way that recognizes the complex relationships between civil-political rights and socioeconomic rights, as well as between human rights and development.

Stated in terms of the New Haven Approach, the treaty parties’ (member countries) shared expectations regarding the political activity prohibition have to be construed, not as placing the borrowing state’s sovereignty and political prerogatives above the human dignity of its citizens, particularly the project-affected people, but rather as a limited recognition that the political inclinations or ideology of a particular borrowing country should not affect the Bank’s decision whether or not to assist the said country.

At present, the definitions of and delineations between what is political and what is economic have evolved, such that matters traditionally falling within the exclusive jurisdiction and discretion of the state as a political and sovereign entity, such as human rights and environmental protection, have become legitimate concerns of the entire international community,\textsuperscript{351} sometimes acting through IOs.\textsuperscript{352} While the state continues to bear the primary duty to address and uphold matters pertaining to human welfare and human rights, the international community has been recognized to have a critical

\textsuperscript{350} One author associates the Bank’s formerly narrow understanding of development (\textit{qua} economic growth) with an expansive interpretation of the political activity prohibition and an extensive deference to the sovereignty of the borrowing state. He then continues to narrate how the Bank’s experiences showed that the “highly restrictive interpretation of the term ‘economic considerations,’ and its expansive view of the political prohibition, have ultimately not proved to be sustainable.” See DARROW, supra note 201, at 150–53.


\textsuperscript{352} KLABBERS, supra note 136, at 27–32.
supplementary or supporting (enabling) role in their achievement. Therefore, although the pursuit of sustainable development is loaded with political implications and challenges, the World Bank, especially given its evolving developmental mandate and experience, would be acting well within its powers to initiate and participate in activities related to good governance, environmental protection, and human rights promotion. It is incumbent upon the World Bank, given its influential position in the international economic order, not only to undertake sustainability-oriented tasks but to fully and officially acknowledge their role in the Bank’s mandate as well. Indeed, given the legal and policy justifications for mission reconstruction offered in this Article, it would even be advisable for the Bank to formulate an express human rights policy recognizing the intimate link between the SDGs and a number of civil-political, socio-economic, and cultural rights.

Second, the previous narrow construction of the term “development” as being equivalent to mere economic growth would no longer be acceptable. To recall, the thrust of sustainable development is the integration of environmental and social dimensions into economic decisionmaking. Moreover, this integrated and holistic understanding of development creates expectations and demands for the fulfillment of several human rights. Even a plain reading of the World Bank’s purposes reveals that it ought to be concerned not only with accumulation of wealth but with raising standards of living and labor conditions as well.

355. Among the Bank’s purposes enumerated in Article I of the IBRD Articles of Agreement is “(iii) To promote the long-range balanced growth of international trade and the maintenance of equilibrium in balances of payments by encouraging international investment for the development of the productive resources of members, thereby assisting in raising productivity, the standard of living and conditions of labor in their territories.” IBRD Articles, supra note 181, Art. 1 (emphasis added), http://siteresources.worldbank.org/EXTABOUTUS/Resources/ibrd-articlesofagreement.pdf (last visited Feb. 1, 2018) [https://perma.cc/W6JK-DQGV] (archived Jan. 22, 2018).
Under this Article’s proposal, therefore, the term “development” has to be construed with the ultimate goals of fulfilling the international community’s demands and expectations and of achieving human dignity. In other words, evolutions in the international community’s understanding of the term have to be taken into account, especially those changes that move closer towards the goal of attaining human dignity.

The Bank should continue to expand and deepen its understanding of “development” by more readily and openly embracing the multi-dimensionality of the concept, and further researching the interlinkages among the economic, social, and environmental dimensions—with particular focus on how these relationships become manifest in the context of poverty eradication efforts, which lie at the heart of the Bank’s present mandate and practice.

Significantly, there remains a threat that “poverty eradication, environmental [protection] . . . and good governance [would be deemed by MDBs as] ‘externalities’ not readily accommodated by market forces alone.”  

Hence, international organizations have to be constantly and continuously reminded of the importance that the international community attaches to these “larger dimensions of development.”  

This proposition can further be appreciated in the light of Pierre-Marie Dupuy’s view that evolutionary interpretation requires the treaty interpreter “to ensure that a new reading is undertaken in such a way as to reflect the common desire of the parties as if they had renegotiated the same agreement taking into account the circumstances that have since evolved.”

Under the foregoing twenty-first century circumstances, the necessity for building global partnerships to pursue shared goals is critical, given the recognized interdependence of human beings, nation-states, and the natural environment. The New Haven School interpretive approach is even more relevant under these

357. Id.
359. See generally G.A. Res. 70/1, U.N. Doc. A/RES/70/1, Transforming Our World: the 2030 Agenda for Sustainable Development, ¶¶ 39–40 (Oct. 21, 2015) (on the relationship between SDG 17 and the 2030 Agenda: “The scale and ambition of the new Agenda requires a revitalized Global Partnership to ensure its implementation . . . This Partnership will work in a spirit of global solidarity, in particular solidarity with the poorest and with people in vulnerable situations. It will facilitate an intensive global engagement in support of implementation of all the Goals and targets, bringing together Governments, the private sector, civil society, the United Nations system and other actors and mobilizing all available resources.”).
circumstances, especially when it is recalled that the ultimate goal of this school of thought is the realization of human dignity. This Article submits that this goal can similarly be associated with the concept of sustainable development,\textsuperscript{360} considering that its multidimensional character and integrative thrust potentially uphold a number of internationally recognized human rights.\textsuperscript{361}

The framework proposed in this Article means that interpretation of the relevant provisions in the IBRD Articles should be sensitive to the implications of such interpretation on human dignity and human rights. An interpretation under this framework cannot lead to the conclusion that the parties intended to considerably constrain the definition of “development” to its original, plain meaning at the time of drafting, i.e., mere economic growth or national income increase without regard to non-economic factors such as environmental protection and social development. Additionally, strict preservation of the purely economic, financial, and non-political character of the World Bank would be incompatible with the proposed framework, because a rigid construction of the political activity prohibition can lead, and has in fact led, the institution to support development projects that indirectly support the human rights violations perpetrated by some borrowing states’ governments or that result in harms to the natural environment or to society.

As an international organization, the Bank should be mindful of the international community’s expectations and demands, as well as the changes thereto\textsuperscript{362}, because those expectations and demands elaborate and contextualize the contemporary shared expectations of the treaty parties regarding the interpretation and application of the constitutive treaty. Otherwise stated, the expectations of the Bank’s member states regarding the overall functioning of the organization they created are shaped and influenced by the expectations and demands of other participants in the international system.\textsuperscript{363}

\begin{footnotesize}
\begin{enumerate}
\item See World Comm’n on Env’t and Dev., supra note 9, ch. 2, ¶ 4 (“The satisfaction of human needs and aspirations [is] the major objective of development . . . A world in which poverty and inequity are endemic will always be prone to ecological and other crises. Sustainable development requires meeting the basic needs of all and extending to all the opportunity to satisfy their aspirations for a better life.”).
\item U.N. Off. of the High Comm’r of Hum. Rts., supra note 354; see generally KALTENBORN, supra note 354; Franklin-Ryan and Allan Lerberg Jorgensen, supra note 354; Human Rights and the SDGs, supra note 354.
\item See Rebecca Bratspies, Rethinking Decisionmaking in International Environmental Law: A Process-Oriented Inquiry into Sustainable Development, 32 YALE J. INT’L L. 363, 371 (2007) (explaining how the opening up of new venues for negotiation, through the IOs, leads to the latter’s modification: “a reconstituted vision of authoritative decisionmaking requires in turn a reconstituted decisionmaker”).
\item See id. (“One effect of the move towards centralization is a shift in the locus of decision from the state, and, at least in theory, a concomitant broadening of the ‘community’ whose values must be considered as part of the decision process.”).
\end{enumerate}
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Moreover, given that the Bank itself is gaining greater interaction with non-state actors, it seems only reasonable that the latter’s inputs would be considered in construing the Bank’s functions and purposes.

In sum, the proposed interpretive framework for the IBRD Articles of Agreement recommends the consideration of the international community’s sustainability-related expectations and demands as part of the treaty’s context. Moreover, consistent with the objectives of both the New Haven School and the sustainable development agenda, interpretation of the constituent treaty should have human welfare and dignity at the center. Corollarily, vested as they may be with substantial power to interpret the IBRD Articles, neither the Bank’s policymaking organs nor the General Counsel can unilaterally retract support for the Bank’s current work relating to sustainable development for as long as the international community deems sustainable development a proper object of global cooperation. Therefore, if a conflict arises between the shared expectations of the treaty parties, and the contemporary international community asserts expectations and demands to uphold human dignity and to build an optimum world public order (aimed at pursuing sustainable development), the latter should prevail.

VI. CONCLUSION: RECONSTRUCTING THE WORLD BANK AS A SUSTAINABLE DEVELOPMENT AGENCY

The objectives of this Article are two-fold. First, this Article shows that the teleological-evolutionary approach used to interpret the IBRD Articles fits into the Vienna Convention framework (legal-descriptive). Second, more crucially, this Article recommends how such an interpretive approach could be enhanced to enable the Bank to become a more proactive and reliable participant in the sustainable development agenda (policy-normative).

This Article offers the tentative conclusion that the Bank’s evolving definition of “development” has been approximating the international community’s understanding of “sustainable development.” At first glance, the economic-political dichotomy—embodied in the provisions of the IBRD Articles that (i) prohibit the Bank’s interference in the political affairs of its member states and (ii) enjoin it to make decisions based on economic considerations only—poses a major hurdle to this claim, since sustainable development involves tasks of a highly political nature. Indeed, as most of the Bank’s development projects and programs become increasingly sustainability oriented, and thus often necessarily touch

364. See IBRD Articles of Agreement, supra note 181, art. 4, § 10, art. 3, § 5(b), art. 5, § 5(c).
upon the manner by which borrowing countries manage their resources and run their government, it becomes crucial to ask whether and how the Bank has been staying true to its constituent instrument.

This puzzle can be framed as three interrelated inquiries: (i) how the Bank became involved in projects and programs that have non-economic concerns such as environmental protection, good governance, and human rights; (ii) whether this involvement is legally justifiable; and (iii) whether as a policy matter, the same is prudent or advisable.

Relative to the first question, the answer can be gleaned from the short historical account provided in Part II of this Article, wherein the Bank's actions were contextualized within the particular historical circumstances in which the Bank was acting. To some extent, the World Bank has apparently been mustering and maximizing its various resources over the years to fill some institutional void in the international system resulting from the myriad changes in the needs, demands, and expectations of humankind. While the Bank is far from noble and its actions far from benign, its ability to learn from its mistakes and to adapt is critical in explaining its current status and scope of activities.

Responding in the affirmative to the second question, this Article demonstrated that the Vienna Convention can accommodate the informal interpretation undertaken by the World Bank so far. A teleological-evolutionary interpretation of the Bank's constituent instrument supported the institution's current wide range of activities. The vital terms that have been the subjects of interpretation by the Bank's organs are “development,” “political,” and “economic.” The use of generic terms in the Articles of Agreement, including in the provision laying down the Bank's purposes, and the fact that the constitutive treaty is precisely meant to create a subsisting entity, justified adopting an evolutionary approach. Thus construed, and even without need of amendment, the Bank's constituent instrument already appears to sufficiently provide legal justification for its participation in the sustainable development agenda.

Consistent with the Vienna Convention, the interpretation was not limited to the ordinary dictionary meaning. Alongside the evolutionary approach, the teleological approach was appropriately used, as references were made to the purposes of the Bank and its contemplated role of serving as a means for member states to pool resources together and cooperate towards the efficient and effective uses of such resources. Among the crucial factors that spurred the teleological-evolutionary interpretation are shifts in thinking within the academy, specifically the economics discipline as regards the growth-development relationship, and broader advances in
international human rights law and international environmental law. The international community’s growing acceptance and assimilation of the concept of sustainable development also influenced the Bank’s attitudes, especially in recent years.

The informal interpretive process undertaken by the Bank with respect to its Articles has been necessary and has sufficiently given effect to the intention of the parties to create an institution that would adapt to shifting world conditions. This evolution, in turn, lawfully expanded the scope of IBRD policies and operations to allow for the organization’s participation in the pursuit of sustainable development. The current policies and operational activities of the World Bank are well within the mandate laid down in its constitutive treaty. Therefore, the policy and operational changes undertaken through the years do not constitute a mission creep, but are instead better appreciated as creative mission reconstruction.

With respect to the third question, a glance at history teaches that the field of development economics and the needs of countries and individuals have been in constant change, and there is probably no amount of foresight (even by experts) that could have accurately predicted how the changes would proceed. Simultaneously, as the Bank’s understanding of “development” deepened and broadened, this international financial institution qua development organization necessarily had to take into account non-financial and non-economic issues that have been found to be determinants of successful design and implementation of development projects and programs in the borrowing member countries.

Under these circumstances, it seems neither prudent nor realistic to require or expect that the constitutive treaties of IFIs be formally amended—on an “as-need-arises” basis—so as to constantly expand their mandate and assign to them additional functions in response to new demands as they arise. The Bank’s resort to informal interpretation allows its policymaking and legal organs to repeatedly collaborate and participate in the interpretive process. It is preferable to amendment or to formal interpretation of the Articles, because it affords the Bank the autonomy and discretion that are necessary if it is to perform its functions, pursue its purposes, and retain its relevance in a changing global landscape. There is therefore wisdom to the path or approach chosen by the World Bank. Such unconventional adaptation, made possible by a hybrid of teleological and evolutionary interpretations, remains within the bounds of international law, and indeed benefits and enriches both the law of treaties and the law of international organizations.

On the other hand, the flexibility of the informal interpretation that the Bank has engaged in for the past several decades may be alternatively viewed as impermanence and uncertainty, which thus poses a risk, albeit perhaps remote, that the Bank’s internal organs would later interpret the developmental mandate of the Bank
narrowly and the political activity prohibition broadly. This shift could halt and reverse the Bank’s current policies and operational activities that concern items in the sustainable development agenda such as good governance and protection of human rights and the environment. It is in this scenario that the proposed interpretive framework—in essence, to broaden the factors to be considered as “context” for purposes of the VCLT—would find most relevance.

The use of the teleological-evolutionary approach has so far worked fairly well to enable the Bank’s continued relevance and adaptation to the changing needs of the world in general and of its clients, i.e., borrowing countries and their constituencies. Such an approach, however, might no longer be sufficient in this current age of sustainable development. Throughout its more than seventy years of existence and accumulated experience, the Bank has mostly been reactive to problems that beset the developing world and the international community as a whole, and this attitude has threatened its survival, or at the very least, seriously harmed its reputation.

In interpreting the Articles, one should keep in mind and emphasize that the World Bank is an institution that forms part of a dynamic international economic system that is expected to contribute to the establishment of an optimum world legal order. The Bank should therefore assume a more proactive role in the sustainable development agenda, and it must guard against the possibility of diminishing or losing the gains it has already achieved relative thereto. This Article thus recommends an interpretive framework that applies not only the teleological and evolutionary approaches (which are already in use), but also the New Haven Approach, such that the international community’s fundamental policies and expectations would have to be ascertained in conjunction with the member states’ shared intention, as embodied in the Articles of Agreement. In the event of a conflict between the two, the greater community expectations and values should prevail.

Simply put, the international community’s fundamental policies must be integrated into the interpretive process. This recommendation entails taking into account the emergence and continuing elaboration of norms and expectations related to sustainable development, and reconciling those norms and expectations with the parties’ intention to maintain the evolving character of the Bank. In the end, if a conflict were to arise between the parties’ shared expectations and the international community’s fundamental policies, the rational interpretation of the Articles of Agreement calls for the latter to prevail over the former, keeping in mind the objective of the optimum world public order to uphold human dignity.

As the international community’s expectations and concerns have come to recognize and include the pursuit of sustainable
development, there can be no unlawfulness or inconsistency in characterizing and promoting the World Bank as both an international financial institution and a sustainable development agency. Indeed, the principles underlying sustainable development are compatible with the goals of upholding human dignity and maximizing human beings' cherished values, and these values find resonance in the sustainable development goals.