

DIFFERING CONCEPTIONS OF DEVELOPMENT AND THE CONTENT OF INTERNATIONAL DEVELOPMENT LAW

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Summary

International development law is the branch of international law that deals with the rights and duties of states and other actors in the development process. International development law emerged as a distinct body of law after the Second World War. It was an attempt to develop a more equitable legal approach to what were perceived at the time to be the core issues in international development, namely international trade relations and a state's responsibilities towards its foreign investors and their home states. Thus the content of international development law was premised on a particular understanding of development. Under the pressure of the problems of development that arose during the 1970s and 1980s, this general agreement on the key issues in development disintegrated. As a consequence, the consensus on the content of international development law also began to break down.

Today, there are competing idealized views of development that shape the current debate about development, and therefore of the content of international development law. The first view, which can be termed "the traditional view", maintains that development is about economic growth. It argues that the challenges of economic development can be distinguished from other social, cultural, environmental and political issues in society. The second view, which can be termed "the modern view" has a holistic understanding of development. It argues that development should be

viewed as an integrated process of change that involves economic, social, cultural, political and environmental dimensions.

The differences between these views revolve around a few key issues. These key issues are whether the state should have the primary role in decision-making relating to development policies and projects; the scope and nature of the responsibilities of the various actors involved in the planning, construction and operation of development projects and the design and implementation of development policies; and the relationship between international and national regulation in the development process. Each of these views leads to a different understanding of the contents of international development law. The “traditional” and “modern” views of international development law differ in their understanding of the substantive content of development law, the importance they attach to the principle of sovereignty and in their view of the relationship between national and international law in the law applicable to the development process.

1. Introduction

International Development Law (IDL) is the branch of international law that deals with the rights and duties of states and other actors in the development process. This suggests that the content of IDL depends on one’s conception of development. Currently there is no general consensus on how the economic, social, political, cultural, spiritual and environmental aspects of human existence should be integrated into a coherent theory of development. Consequently, it is difficult to reach agreement on the content of IDL. This essay will demonstrate that one’s understanding of the content of IDL depends to a large extent on one’s view on the relationship between economic growth and the social (including human rights), environmental, political, and cultural aspects of the development process.

This uncertainty about the content of International Development Law suggests a useful structure for the paper. It will begin with a description of the history of IDL. Thereafter it will discuss the two general categories into which different views of development can be classified and the different views of IDL that arise from each of these perceptions. The final section will consider likely future developments in our understanding of the content of IDL.

2. A Brief History of IDL

IDL began to emerge as a distinct body of law after the Second World War. It was inspired by the Latin American development theorists who argued that despite more than a century of political independence, the development of Latin American countries was hampered by its dependent economic relations with Europe and North America [1]. It gained further support in the era of decolonization from the experience of the newly independent countries of Africa and Asia. These countries discovered that while they had won their political independence, they did not have economic independence. They were locked into unequal and unfavorable economic relations with their former colonial masters that constrained their ability to develop [2]. Examples of economic relationships that adversely affected the economic independence of developing countries were:

- 1) concession agreements that gave foreign investors long term relatively unrestricted access to the resources of these countries at low cost [3]; and
- 2) unfavorable trade arrangements that gave the former colonial powers relatively easy access to their former colonies' market but denied comparable access to products, other than raw materials, from these countries [4].

The international legal implications of these types of economic transactions were governed by the principles of international law, particularly those relating to state responsibility for the treatment of aliens and their property. These principles were primarily the creation of the countries of Europe and North America and were not particularly sensitive to the concerns of the developing countries in Africa, Asia and Latin America. Their primary focus in this regard was on protecting the sanctity of contractual arrangements, ensuring that foreign investors were treated according to certain minimum standards, and that foreign owners of nationalized property were promptly adequately and effectively compensated [5].

The newly independent countries and sympathetic legal commentators realized that the international legal order, like the existing economic order, worked to their disadvantage. They began to fashion legal arguments to justify alterations in their economic relations and to gain greater control over their economic destinies. For example, they began to argue that the doctrine that all contracts should be fully honored according to their terms—*pacta sunt servanda*—was not the only international legal principle applicable to international economic transactions. They proposed that its application should be modified by the well accepted public international law principle—clausula rebus sic stantibus—which provides that changed circumstances can justify changing the terms of international agreements [6]. This was particularly useful for those countries which found themselves locked into long term unfavorable concession agreements. These sorts of arguments which were based on existing international legal doctrine fashioned the initial principles of IDL.

Thus, IDL began as an attempt to develop a more equitable legal approach to the core international economic issues of interest to developing countries, namely international trade relations and a state's responsibilities towards its foreign investors and their home state. Its initial objective was to develop legal principles and arguments that would help developing countries gain control over their economic destinies. IDL was successful in elaborating justifications for the unilateral modification of unfavorable economic agreements. It provided developing countries with a principled basis on which to terminate or renegotiate these agreements and to gain at least formal economic independence. These efforts received international legal recognition in such documents as the United Nations Declaration on Permanent Sovereignty over Natural Resources, ([7], [8]) the arbitral awards made in the cases arising from the nationalizations of the oil companies in the Middle East;([9],[10]) and in the negotiated compensation agreements that followed the nationalization of key natural resources and other corporate enterprises in the developing countries.[11]

During this period the special needs of developing countries were recognized in other ways. For example, Part IV of the General Agreement on Tariffs and Trade (GATT),

which allows developing countries to receive non-reciprocal trade benefits from their richer trading partners, was adopted in 1965 [12]. They also received some support for more generous capital flows. In 1960 the member states of the World Bank Group established the International Development Association to lend to the poorest developing countries on highly concessional terms [13]. In the same year, the rich countries supported a UN General Assembly resolution imposing an obligation on them to provide financial assistance to developing countries [14].

These legal successes, however, resulted in only limited economic success. By the 1970s, many developing countries still faced substantial barriers to development. Unfortunately, there was no longer any clear consensus about what these barriers were. As a result, there were also disagreements about the appropriate legal responses to them. Some saw the problems as being imbedded in the structure of the international economic order and called for a new international economic order (NIEO) [15]. Others, while not denying that there were problems with the international order, argued that the problem was primarily caused by the economic and political policy choices of the developing countries themselves and rejected these calls [16]. During most of the 1970s and early 1980s many IDL theorists and practitioners were focused on this debate over the need for a new international economic order and its implications for development and IDL.

The demands for an NIEO were eventually overwhelmed by the debt crisis of the 1980s. Thereafter the attention of the international community shifted to the internal barriers to, and requirements for development in individual countries. Until recently relatively less attention was paid to the structure of the international order. This change in focus has generated an ongoing intense debate about the nature of the development process and the barriers to development. IDL has been and continues to be affected by this broader debate about development. The result is that today one's understanding of the content of IDL tends to depend on one's position in this broader development debate.

Most positions in this broader debate can be classified into one of two competing idealized views of development. It is to these two competing views of development and their legal implications that we now turn.

3. Competing Views of Development

There was a time when there was a general consensus that development was about economic growth [17] and that, at least analytically, it could be treated as a separate problem from other social, cultural and political issues in society. Today, however, that consensus has broken down. Now many people argue that development must be seen holistically, as an integrated process of change that involves economic, social, cultural, political and environmental dimensions [18]. The debate between these two positions has not been resolved and today the various competing views can be categorized into two contending approaches to development. We can term these two approaches 'the traditional view' and the 'modern view'. Each of these idealized views of development leads to a different understanding of the contents of IDL.

The differences between these views of development revolve around a few key issues.

They relate to the role that the state should play in development, whether development is purely an economic process or should be viewed more holistically so that issues such as human rights are seen as an integral part of the development process, and to the relationship between international and national regulation ([19]). More precisely they differ over whether the state should have the primary role in decision-making relating to development policy and projects. They also differ about the scope and nature of the responsibilities of the various actors involved in the planning, construction and operation of development projects and in the design and implementation of development policy. This means that a key area of disagreement is the definition of the appropriate legal and other relationships between the following four groups of actors in development policy making and projects:

- the state, which approves development projects and makes and implements development policy;
- project sponsors, who may be the private sector, the public sector or the state itself;
- project contractors, which includes those public and private sector institutions which provide the financing, goods and services for the design, construction and operation of development projects and for the implementation of development policies; and
- individuals and communities that are directly or indirectly affected, in both positive and negative ways by particular policies and projects and their representatives.

The two views of development and the relationships they posit between these different groups of actors and the implications of each of these views for IDL are discussed below. As will be seen one's conception of development influences one's understanding of the content of IDL in four ways. First, it shapes one's view of the substantive content of IDL. Second, it helps define one's view of the relationship between the sovereign and the other actors in the development process. Third it influences the degree to which one views IDL as 'international' as opposed to 'transnational' law. Fourth, it determines one's view of the role that international human rights law plays in IDL. Each of these aspects of IDL will be considered separately.

3.1. The Traditional View of Development

The traditional view is advocated by elements of the business community, governments, and international organizations.

The traditional view is that development is primarily an economic process that consists of discrete projects (for example: building a dam, a road, a school, a factory, a mine or a telecommunications system) and specific economic policies. It recognizes that development has social, environmental, and political implications but argues that these can be dealt with separately from the economic aspects.

The proponents of this view divide decision-making about these projects and policies into two parts. First, there are broad policy issues in which decisions are made through

the political process by the government and society in which the policy or project will be implemented. Examples of broad policy issues include: (1) whether the budget should allocate additional resources to health and education or to energy and national defense; (2) whether to build a system of highways or public transport; and (3) whether to promote export oriented or locally-focused industries.

The second category involves specific project or policy decisions. Examples of these types of decisions include: (1) how should a dam be constructed, or (2) what exactly should be done to promote local industries

According to this view, the first responsibility of the project sponsors and contractors is to evaluate each project in terms of its technical, financial and economic feasibility. As long as all technical problems can be resolved, the economic and financial benefits exceed the costs and it is expected to produce the desired rate of return, a project is justified and is treated as developmentally beneficial [20]. The project sponsor's and contractors' remaining duty is to execute their contractual obligations in regard to the project faithfully and efficiently.

The traditional view allows the project sponsors and contractors to treat all other issues, that is broad policy issues, including social and environmental issues, as externalities. These issues are perceived as the prerogative of the society or government in which the project is being built [21]. This means that the project sponsors' and contractors' operating assumption is that the society or government in which the project is located will decide how it wishes to manage its own environment and to share the costs and benefits of the project among the various stakeholders in these projects. The project contractors and sponsors can treat these decisions as background facts during the project negotiations and as fixed variables in their own planning.

To the extent the various project stakeholders, other than project sponsors and contractors, wish to be involved in the project's decision-making process, they will need to consult with the government because it has control over the broad social, political, environmental, and cultural implications of the project. These other stakeholders will only need to consult with the project sponsor or contractors on specific technical issues related to the design, construction or operation of the project.

Decision-making under the traditional view is likely to be 'top-down'. There are several reasons for this. First, most project contractors are private companies in which the managers of these companies have been hired by the owners to run the companies for their benefit. This means that they are expected to make all project related decisions with this objective in mind [22]. Public sector project sponsors and contractors similarly have to account to their owner – the state (or states in the case of multilateral institutions) – for how they use their assets. This suggests that they are also likely to have a top-down decision-making structure.

Second, while the managers may feel the need to consult with others before making any particular project decision, the range of people with whom they need to consult is limited. Since the project sponsors and contractors are only responsible for technical and financial issues, their senior management only needs to consult with experts on

these issues before making their decisions. To the extent that the project requires a broader consultative process, it is in regard to the social and environmental externalities that are the responsibility of the government and not the sponsors or contractors.

The traditional view makes it easy to identify to whom the different participants in the project are accountable. Project sponsors and contractors are only accountable to three groups. First, they are accountable to government regulators for their compliance with the applicable regulations. Second, they are accountable to those who hired them for the performance of their contractual obligations. Third, they are accountable to their owners or shareholders for their management of the enterprise.

The project sponsors and contractors will only be accountable to the project's intended beneficiaries and to those adversely affected by the project in two situations. The first is when they have a direct contractual relationship with these other stakeholders and have failed to perform their contractual obligations. The second is when the sponsors or contractors have committed a tort against these other stakeholders and there is a forum that is willing to entertain the victims claim. This forum could be either a national court or an international body.

The state, as the party with decision-making responsibility for the broader social and environmental aspects of the project, is accountable to the beneficiaries and those harmed by the project. Accountability is imposed on the state through the political system. In other words, the proponents of the traditional view are relying on the two primary mechanisms of accountability in democratic governance to hold governments responsible for their decisions and actions relating to specific policies or projects. The first mechanism is the periodic elections for a new government. Thus, interested persons can hold the government, which has sponsored or approved the project, accountable for its actions by voting against it in the next elections. This is not a particularly effective means of accountability for specific project related decisions. It is unlikely that the electorate as a whole will base its decision on the government's conduct in one project that may only affect a portion, possibly a very small portion, of the electorate. The second mechanism is whatever administrative or judicial procedures the state might have established through which interested private actors can challenge governmental decisions.

It should be noted that the top down nature of decision-making and the limited range of accountabilities described above both suggest that the traditional view contemplates a very limited role for non governmental organizations ("NGOs") in development. Unless these groups can act as project sponsors or contractors, their role is limited to assisting project victims hold project decision-makers accountable for their decisions and actions in the project. Their efficacy in doing so will depend, in the first instance, on how much access they have to judicial and administrative tribunals and to the media. They may also be able to hold decision makers accountable through international forums and through developing international campaigns in conjunction with international NGOs [23].

A third implication that follows from the traditional view is that it places some constraints on the topics that are open for negotiation in any development transaction.

Since the broad social, political and environmental decisions are the prerogative of the state, they are outside the scope of the negotiations between the project sponsor and the government or the project sponsor and the project contractors. In both sets of negotiations, the broad social, environmental and political parameters of the project are treated as fixed and the parties must negotiate the terms of their transaction within these parameters. This is consistent with the legal rule that a foreign project sponsor's or contractor's obligation is to obey the law of the host state and to refrain from interfering in the affairs of the host state[24].

A fourth implication is that the traditional view of development is consistent with traditional notions of sovereignty. The traditional view by treating social, political and environmental factors as project externalities is implicitly defining the scope of the state's sovereignty in regard to the other actors in development. It is making clear that decisions relating to the social, political and environmental consequences of development should be taken by the sovereign and its decisions should be respected by the other actors in development.

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Bibliography

Adams, J. M. (2000). Environmental and Human Rights Objections Stall Turkey's Proposed Ilisu Dam, 2000 *Colorado Journal of International Environmental Law & Policy* 173 [This article explains that the export credit agencies of developed countries refused to give export credit support unless Turkey satisfied four conditions designed to address international concerns about the project's adverse impacts on human rights and the environment]

Agénor R. R. & P. J. Montiel. (1996) *Development Macroeconomics*, 679 pp. Princeton, N.J.: Princeton University Press. [This book offers thorough discussion of development macroeconomics, which has drawn little attention in the conventional literature on development economics. The latter focuses on removing barriers to economic growth]

Akinsanya, A.A. (1980). *The Expropriation of Multinational Property in the Third World*, 386pp. New York: Praeger. [This book offers in depth discussion of law and practices of expropriation of foreign-owned property in developing countries]

Aminioil v. Kuwait. (1982). 21 *International Legal Materials* 976-1053 [This case involves the dispute arising from the host country's unilateral termination of the oil concession despite the stability clause in the concession agreement]

Asante, S. K.B. (1980). *The Concept of Stability in Contractual Relations, in the Transnational Investment Process*, in Kamal Hossain (ed.), *Legal Aspects of the New International Economic Order* 234. [This explains the theoretical basis of stability of transnational investment agreements and developing countries' attempts to renegotiate concessions]

Battle, J. B. et al. (1994). *Environmental Decisionmaking and NEPA*, 305 pp. Cincinnati, Ohio: Anderson Pub. Co. (2nd ed.). [This book explains disclosure of information in the National Environmental Policy Act]

- Baum, W. C. & S. M. Tolbert. (1985). *Investing in Development: Lessons of World Bank Experience*. 610 pp. New York: Oxford University Press. [This book explains cost-benefit analysis, cost recovery, and financial performance in project analysis]
- Bradlow, D. (1994). International Organizations and Private Complaints: The Case of the World Bank Inspection Panel, 34 *Virginia Journal of International Law* 553-613 [This article outlines the function of the Inspection Panel as a forum in which nongovernmental parties can hold an international organization directly responsible for the harm resulted from the violation of its own rules and procedures]
- Bradlow, D. D. (2001). Stuffing New Wine Into Old Bottles: The Troubling Case of the IMF, 3 *Journal of International Banking Regulation*. [This article examines key issues in the existing arrangements for the governance of IMF]
- Bradlow, D. D. (1996). Critical Issues Facing the Bretton Woods System: The World Bank, the IMF, and Human Rights, 6 *Transnational L. & Contemporary Problems* 47-90. [This article discusses problems in the structure and functions of the international economic organizations]
- Bradlow, D.D. (2005) "Private Complainants and International Organizations: A Comparative Study of the Independent Inspection Mechanisms in International Financial Institutions", 36 *Georgetown J. Int'l. L.* 403 [This article is a comparative study of the inspection mechanisms at all the multilateral development banks and some similar mechanisms at other international organizations.]
- Brownlie, I. (1990). *Principles of Public International Law* (4th ed.) [This identifies the principles of the sovereignty and equality of states as the fundamental doctrine of the law of nations]
- Bulajić, M. (1993). *Principles of International Development Law: Progressive Development of the Principles of International Law Relating to the New International Economic Order* (2d. ed.) [This offers thorough discussion on the major principles of international development law, such as permanent sovereignty over natural resources and treatment of transnational corporations and technology transfer].
- Bulajić, M. (1980). Legal Aspects of New International Order, in K. Hossain (Ed.), *Legal Aspects of the New International Economic Order* 45 [This explains main issues in the NIEO, such as draft U.N. Code of Conduct on Transnational Corporations and a Set of Principle and Rules on Restrictive Business Practices]
- Chorzow Factory Case (F.R.G. v. Pol.) (1928). P.C.I.J. ser. A3 No. 17. [The judgment in this case awards restitution to the foreign investor as remedy for nationalizing State's breach of its contractual obligations]
- Chowdhury, S. R. (1980). Legal Status of the Charter of Economic Rights and Duties of States, in K. Hossain (Ed.), *Legal Aspects of the New International Economic Order* 79 [This notes that Article 2 of the Charter is regarded as "a classic restatement" of the Calvo Clause, which rejects the use of independent international tribunals to resolve investment disputes]
- Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention), Feb. 25, 1991, 30 *International Legal Materials* 800-819 (not yet in force as of Nov. 25, 1999). [This convention purports to create states' duty to conduct environmental impact assessment in projects that are expected to have transboundary effects]
- Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), *opened for signature* Mar. 1, 1980, 19 *International Legal Materials* 33-45 (1980). [This convention creates states' obligations to eliminate discrimination against women within their jurisdiction]
- Convention on the Rights of the Child, Nov. 20, 1989, 28 *International Legal Materials* 1456-1476 (1989). [This convention creates states' obligations to protect the rights of children within their jurisdiction]
- de Hann, E. J. (1998). Integrating Environmental Concerns into Trade Relations, in F. Weiss et al. (Eds.), *International Economic Law with a Human Face* 307 [This discusses characteristics of the UNCTAD General System of Preferences and its incorporation into the GATT]
- Garcia-Amador, F. V. (1990). *The Emerging International Law of Development: A New Dimension of International Economic Law*. [This book offers excellent discussion of major issues in the NIEO, such as the doctrine of permanent sovereignty over natural resources and compensation to foreign owners of nationalized property]

General Agreement on Tariffs and Trade (GATT). (1994). GATT Dispute Settlement Panel Report on United States Restrictions on Imports of Tuna, 33 *International Legal Materials* 839-903 [This case deals with United States import ban on tuna products that originate from Mexico and imported from the European Community because Mexico did not introduce dolphin-friendly fishing practices required under United States environmental law]

GATT. (1991). GATT Dispute Settlement Panel Report on United States Restrictions on Imports of Tuna, 30 *International Legal Materials* 1594-1623 [This case deals with United States import ban on tuna products from Mexico]

GATT. (1980). *Differential and More Favorable Treatment: Reciprocity and Fuller Participation of Developing Countries*, Nov. 28, 1979, L/4903, GATT B.I.S.D. (26th Supp.) at 203 [This establishes a legal basis of GSP in the GATT as the 'Enabling Clause' agreed in the Tokyo Round in 1979]

GATT. (1977). Protocol Amending the General Agreement to Introduce Part IV on Trade and Development and to Amend Annex I, Feb. 8, 1965, 17 U.S.T. 1977. [This protocol deals with differential treatment of developing countries]

GATT. (1974). *Arrangement Regarding International Trade in Textiles*, Dec. 20, 1973, 25 U.S.T. 1001 (entered into force Apr. 1, 1974). [This agreement authorizes developed countries to restrict imports of textiles from developing countries]

Grossman, C. & D. D. Bradlow. (1993). Are We Being Propelled Towards a People-Centered Transnational Legal Order?, 9 *American University Journal of International Law & Policy* 1-25. [This article discusses the impact of increases in interdependence among states and transnational activities of non-state actors, such as multinational corporations and NGOs, on international law]

Gulhati, R. (1989). *The Political Economy of Reform in Sub-Saharan Africa: Report of the Workshops on the Political Economy of Structural Adjustment and the Sustainability of Reform*. [This identifies "policy and institutional distortions" as one of the crucial factors of the African economic crisis].

Henn, H.G. & J. R. Alexander. (1983). *Laws of Corporations*. (3rd ed.) [This explains shareholders' control over the board of directors and the board of directors' duties to the corporations, shareholders, and other beneficiaries]

Hossain, K. (1980). Introduction: General Principles, the Character of Economic Rights ad Duties of States and the NIEO, in K. Hossain (Ed.), *Legal Aspects of the New International Economic Order* 1. [This article gives a brief overview of developing countries' historical pursuits of economic equity in the NIEO]

Hunter, D. et al. (1998). *International Environmental Law and Policy*, 1567 pp. New York: Foundation Press. [This explains the precautionary principle to address scientific uncertainty and environmental impact assessment to integrate environmental issues into development planning and maximize the potential for environmentally sound and sustainable development]

International Convention on Civil and Political Rights. Dec. 16, 1966, 999 U.N.T.S. 171. [This convention shows the international recognition that people have the right of self-determination]

International Convention on the Elimination of All Forms of Racial Discrimination, Dec. 21, 1965, 660 U.N.T.S. 195. [This convention creates states' obligations to eliminate all forms of racial discrimination based on race, color, descent, or national or ethnic origin]

International Covenant on Economic Social and Cultural Rights, Dec. 16. 1966, 993 U.N.T.S. 3 [This convention includes provision regarding the equal right of men and women to the enjoyment of economic, social, and cultural rights]

International Development Association. (1960). Articles of Agreement for International Development Association, Jan. 26, 1960, 11 U.S.T. 2284 (entered into force Sep. 24, 1960). [This agreement establishes the International Development Association]

International Financial Corporation (IFC). (2001). Operational Guidelines for the Office of the IFC/MIGA Compliance Advisor/Ombudsman, 26 pp. Washington DC. [This guideline explains procedures to submit complaints to the ombudsman for review of IFC funded projects]

IFC, (2005). *Safeguard Policies* [Online]. Available:

<http://www.ifc.org/enviro/EnvSoc/Safeguard/safeguard.htm>. [2005] [This provides accesses to specific environmental and social safeguard policies of World Bank groups applicable to IFC-funded projects]

International Monetary Fund (IMF). (2000). *External Evaluation of IMF Economic Research Activities: Report by a Group of Independent Experts*, 88 pp. Washington DC. [This report is an independent review on IMF's economic research activities]

International Labor Organization. (1999). International Labor Organization Convention Concerning the Prohibition and Immediate Elimination of the Worst Forms of Child Labor, June 17, 1999, 38 *International Legal Materials* 1207-1210 [This convention creates states' obligation to immediately eliminate and prohibit worst forms of child labor including slavery, prostitution, and illicit activities].

IMF. (1985). Group of Twenty-Four Report on Changes in the Monetary System, 24 *International Legal Materials* 1699-1714 [This urges developed countries to accelerate their efforts to reach the target of 0.7 percent of GNP for ODA agreed at United Nations Conference on Trade and Development VI in 1984].

International Standardization Organization. (2001). *ISO 9000 and ISO 14000 in Plain Language* [Online]. Available: <http://www.iso.org/iso/en/iso9000-14000/tour/plain.html>. [Sept. 2001] [This explains that ISO introduced a series of environmental and quality management standards]

James Waver, J. & K. Jameson. (1981), *Economic Development: Competing Paradigms*, 131 pp. Washington, D.C.: University Press of America. [This book introduces conventional neoclassical models, in which human welfare is measured by increases in consumption of goods and services, and alternative models that take account of social aspects of economic development]

Jota v. Texaco, Inc. (1998). 157 F.3d 153-164 (2d Cir.) [This case involves consolidated appeals of two class actions brought by residents of Ecuador and Peru against Texaco in New York for environmental and personal injuries allegedly caused by Texaco's exploitation of oil fields in a river basin in Ecuador]

Kelly, E. (1980). 'National Treatment' and the formulation of a Code of Conduct for Transnational Corporations, in K. Hossain (Ed.) *Legal Aspects of the New International Economic Order* 137 [This article explains difference in the positions of developing countries and industrialized countries concerning national treatment in the Draft Code of Conduct on Transnational Corporations]

Levi Strauss & Co. (2001). *Social Responsibility/Global Sourcing and Operating Guidelines* [Online]. Available: <http://www.levistrauss.com/responsibility/conduct/guidelines.htm>. [Aug. 2001] [This outlines the corporate guidelines to take account of environment, labor, and human rights issues in business partners and the host country]

Lewellen, T. C. (1995). *Dependency and Development: An Introduction to the Third World*, 272pp. Westport, Conn.: Bergin & Garvey. [This book explains the evolution of dependency theory, which primarily paid attention to underdevelopment caused by the unequal exchange between developing countries and the richer industrialized countries of North America and Western Europe]

Loibl, G. (1998). The World Bank Group and Sustainable Development, in F. Weiss et al. (Eds.), *International Economic Law with a Human Face* 513 [This article discusses Bank's operational policies and procedures relevant to environmental protection and sustainable development]

Malanczuk, P. (1998). Globalization and the Future Role of Sovereign States, in F. Weiss et al. (Eds.), *International Economic Law with a Human Face* 45 [This article gives examples of international protests against Shell for disregard of human rights of minority rights activists in Nigeria and against Nike for unfair labor practices including use of child labor in developing countries]

Morse B. & T. R. Berger. (1992). *Sardar Sarovar: The Report of the Independent Review*, 363 pp. Ottawa: Resource Futures International. [This book describes how Sardar Sarovar projects, which faced resistance from tribal peoples living in the project area, have adversely affected these peoples]

Mukerji, A. (2000). Developing Countries and the WTO: Issues of Implementation, 34 *Journal of World Trade* 33. [This article discusses difficulties faced by developing countries in complying with various obligations under the Uruguay Round Agreements]

Nike Inc. (2001). *Labor Code of Conduct* [Online]. Available: <http://nikebiz.com/labor/code.shtml>. [Aug. 2001] [This highlights its "zero tolerance for under-age labor"]

Organization for Economic Development (OECD) (2000). *The OECD Guidelines for Multinational*

Enterprises. Paris: OECD. [This guideline provides for non-interference by transnational corporations in local affairs of the host country]

Pearson, B. L. et al. (1970). *Partners in Development (Pearson Report)*, 339 pp. New York: Praeger. [This report proposes a specific target for ODA, in which donor countries would offer at least 0.7 percent of GNP preferably by 1979 and no later than 1980]

OECD. (1984), Declaration by the Governments of OECD Member Countries and Decisions of the OECD Council on International Investment and Multinational Enterprises, 21 June 1976, Paris: OECD [This declares that Member States should give another Member country or its nationals ‘national treatment,’ which is “consistent with international law and no less favorable than that accorded in like situations to domestic enterprises”].

Policy Department & Review Department, IMF. (2001). *Review of the Funds Experience in Governance Issues*, 57 pp. Washington DC. [This explains that IMF regards good governance as an important condition to effectively attain the objectives of IMF-supported projects and promotes it through prior consultations with States seeking assistance]

Qureshi, A. H. (1999). *International Economic Law*, 417 pp. London: Sweet & Maxwell. [This offers normative frameworks of IDL, which is an area of international economic law that can be a matter of controversy between developing and developed countries]

Mikesell, Raymond F. & Larry Williams. (1992). *International Banks and the Environment*, 302 pp. San Francisco: Sierra Club Books. [This discusses several case studies in which poor assessments of projects costs have resulted in excessive environmental costs]

Rich, B. (1994). *Mortgaging the Earth: The World Bank, Environmental Impoverishment, and the Crisis of Development*, 376 pp. London: Earthscan. [This book analyzes the World Bank’s often destructive environmental and political impact on millions of people]

Salacuse, J.W. (1999) From Developing Countries to Emerging Markets: A Changing Role for Law in the Third World, 33 *International Lawyer* 875-890 [This article discusses dominant development models before and after 1980s]

Saudi Arabia v. Aramco. (1958). 27 *International Law Reporter* 117. [This interprets the scope of the company’s rights granted by the concession agreement that stipulated “exclusive concession for sixty years in the eastern part of Saudi Arabia”]

Schachter, O. (1998). The Erosion of State Authority and Its Implications for Equitable Development, in F. Weiss et al. (Eds.), *International Economic Law with a Human Face* 31 [This article describes active roles played by transnational civil society, including private business, NGOs, and scientific and technical experts, in promoting international development]

Schrijver, N. (1997). *Sovereignty Over Natural Resources: Balancing Rights and Duties*, 452 pp. Cambridge; New York: Cambridge University Press. [This book discusses international concessions involving natural resources and favorable trading and judicial treatment given to colonial forces].

Shell Oil Co.(2001). Our Policy and Principles [Online]. Available: <http://www.countonshell.com>. [Aug. 2001] [This provides information on Shell’s corporate policy regarding business principles, health and environment, and sustainable development]

Shelton. D. L. (1999). The Inter-American Human Rights System, in H. Hannum, Ed., *Guide to International Human Rights* 11-14 (3rd ed.) [This describes the methods by which international human rights obligations can be enforced in the Inter-American Human Rights Commission]

Shihata, I. F. I. (2000). *The World Bank Inspection Panel: In Practice*, 510 pp. Oxford; New York: Oxford University Press. [This book discusses the objectives and mechanism of the Inspection Panel and its operation]

Shihata, I. F. I. (1991), The Settlement of Disputes Regarding Foreign Investments: The Role of World Bank Group, in F. Tschofen & A. R. Parra (Ed.), *The World Bank in a Changing World* (pp. 287-308) [This article explains the role of the World Bank Group in international investment disputes]

Shihata, I. F. I. (1991). *The Role of the Multilateral Investment Guarantee Agency (MIGA)*, in F. Tschofen & A. R. Parra (Ed.), *The World Bank in a Changing World* (pp.271-86). [This article offers

through explanation of the function of the MIGA]

Shihata, I. F. I. (1991). *Towards a Greater, Depoliticization of Investment Disputes: The Roles of ICSID and MIGA*, in F. Tschofen & A. R. Parra (Ed.), *The World Bank in a Changing World* (pp.309-42) [This article discusses investment dispute resolution in ICSID and political risk insurance in MIGA]

Sornarajah, M. (1994). *The International Law on Foreign Investment*, 430 pp. Cambridge; New York: Cambridge University Press, Grotius Publications. [This book examines host State's control over foreign investment, including regulation of entry and other public policy requirements, host State's responsibility for injuries to foreign investors, and host state's jurisdiction over foreign investors]

Tech. Comm. 207, ISO. (2001). *What is ISO 14000?* [Online]. Available: <http://www.tc207.org/faqs/index.html>. [Aug. 2001] [This states that ISO created a series of environmental management standards (ISO 14000) to address the following issues: environmental management systems, environmental auditing and related investigations, environmental labels and declarations, environmental performance evaluation, and life cycle assessment]

United Nations. (1997). *Programme for the Further Implementation of Agenda 21*, G.A. Res. S19-2, U.N. GAOR, 19th Special Sess. 11th plenary mtg., U.N. Doc. A/S19-2 [This reports the five-year review of UNCED, which highlighted the principle of common but differentiated responsibilities in formulation and implementation of national strategies for sustainable development while calling for commitments of all parties concerned in both developed and developing countries.]

United Nations (1992). *Agenda 21*, U.N. GAOR, 47th Sess., Annex 2, U.N. Doc. A/CONF.151/4 [This reaffirms the U.N. target of 0.7 percent of GNP for ODA].

United Nations. (1992). Convention on Biological Diversity, June 5, 1992, 31 *International Legal Materials* 818-841. [This convention stresses vital roles of indigenous peoples, local communities, and women in maintaining and promoting sustainable use of biological diversity].

United Nations. (1992). Rio Declaration on Environment and Development, U.N. Doc. A/CONF.151/Rev. 1, 31 *International Legal Materials* 874-880. [This declaration includes provisions concerning environmental impact assessment, precautionary principle, and citizens' participation in environmental policy-making]

United Nations. (1992). United Nations Framework Convention on Climate Change, May 29, 1992, 31 *International Legal Materials* 849-873 [This convention creates states' obligation to promote education, training, and public awareness in order to increase public participation in actions to prevent global warming].

United Nations. (1987). *Declaration on the Right to Development*, G.A. Res. 41/128, U.N. GAOR, 41st Sess., Supp. No. 53, at 186, U.N. Doc. A/41/128 [This declaration deals with development as a "comprehensive economic, social, cultural and political process"]

United Nations (1981). *Resolution on an International Development Strategy for the Third U.N. Development Decade* G.A. Res. 35/56, U.N. GAOR, 35th Sess. Supp. No., § 2, U.N. Doc. A35/56 [This resolution recognizes imbalances and inequities between developed and developing countries in the present system of international economic relations and seeking to restructure the existing international economic order].

United Nations. (1980). The Set of Principle and Rules on Restrictive Business Practices, G.A. Res. 35/63, U.N.GAOR, 35th Sess., Agenda Item 61, U.N. Doc. A/Res/35/63.

United Nations. (1975). *Charter of Economic Rights and Duties of States*, G.A. Res. 3281, U.N. GAOR, 29th Sess. Supp. No. 31, U.N. Doc. A/9631. [This Charter calls for the establishment of a new international economic order designed to remove major hurdles to economic development in developed countries]

United Nations. (1974). *Declaration on the Establishment of a New International Economic Order*, G.A. Res. 3201, U.N. GAOR, 6th Spec. Sess., Supp. No. 1, U.N. Doc. A/9559. [This states that States "shall correct inequalities and redress existing injustices" and "make it possible to eliminate the widening gap between the developed and developing countries"]

United Nations. (1972). Declaration of the U.N. Conference on the Human Environment, June 16, 1972 U.N. Doc. A/Conf. 48/14/Rev.1, reprinted in 11 *International Legal Materials* 1416. [This declaration

recognizes environment protection as an issue of international concern]

United Nations. (1968). *Preferential or Free Entry of Exports of Manufactures and Semimanufactures of Developing Countries to the Developed Countries*, UNCTAD, 2d Sess., Vol. I, Annex, Agenda Item 11, at 38, U.N. Doc. TD/97/Annexes (1968) [This lays out the principles of the GSP].

United Nations. (1962). *Declaration on the Permanent Sovereignty over Natural Resources*, G.A. Res. 1803, U.N. GAOR, 17th Sess., Supp. No. 17, at 15, U.N. Doc. A/5217. [This declaration recognizes states' permanent sovereignty over natural resources within their jurisdiction]

United Nations. (1961). *Resolution on United Nations Development Decade: A Programme for International Economic Co-operation (I)*, U.N. Res. 1710, U.N. GAOR, 2d. Comm. 16th. Sess., 1084th plen. mtg.[This resolution adopts an economic growth rate of five percent in national income as a target for developing countries]

United Nations. (1960). Accelerated Flow of Capital and Technical Assistance to the Developing Countries, G.A. Res. 1522, U.N. GAOR. 948th plen. mtg. [This adopts a target of financial flows to developing countries from developed countries, which are supposed to spend one percent of their national income as international assistance including public loans and private investment].

United Nations. (1948). Universal Declaration on Human Rights, G.A. Res. 217A, U.N. GAOR, 3d Sess., pt. I, U.N. Doc. A/810. [This declaration shows states' recognition of the protection of human rights as an international concern]

United Nations Commission on Human Rights. (1995). Draft United Nations Declaration on The Rights of Indigenous Peoples, 34 *International Legal Materials* 541-555.[This draft declaration purports to develop international standards for the recognition and protection of the rights of indigenous peoples]

United Nations Commission on Transnational Corporation (UNCTC). (1984), *Draft United Nations Code of Conduct on Transnational Corporations*, U.N. Doc. E/c.10/1984/S/5. [This draft includes the provision that foreign investors must respect and are subject to the laws and exclusive jurisdiction of their host state]

United Nations Conference on Trade and Development (1985). *Draft International Code of Conduct for the Transfer of Technology*, U.N. DOC. TD/TOT/47 [This draft purported to create rules concerning technology transfer from developed to developing countries as an essential component of the NIEO].

United Nations Development Programme. (2000). *Human Development Report 2000*. New York. [This report offers statistical information on various aspects of social development]

United Nations Economic Social Council. (1974). E.S.C. Res. 1903, U.N. ESCOR, 57th Sess., Supp. No. 1, at 13, U.N. Doc. E/5570 [This establishes The United Nations Center on Transnational Corporation was created in 1974]

United Nations Institute for Training and Research. (1993). *International Financial Institutions, Module 5* [This discusses the weighted allocation of voting power in the IMF and in the World Bank that takes account of differences in member states' contributions and shares]

UNCTC. (1984). *Report of the Secretariat: Compilation of the Formulation of the United Nations Code of Conduct on Transnational Corporations*, U.N. Doc. E/c.10/1984/S/5. [This report discusses outstanding issues of the Draft Code on Transnational Corporations]

Vienna Declaration and Programme of Action (1993), U.N. Doc. A/CONF.157/24, pt. I, 32 *International Legal Materials* 1661-1687. [This action program seeks to enhance international cooperation in protecting human rights]

Weiss, F. (1998). Internationally Recognized Labour Standards and Trade, in F. Weiss et al. (Eds.), *International Economic Law with a Human Face* 79 [This article identifies the use of trade sanction against States that fails to protect labor rights as a key issue in debates on international trade and labor standards]

World Bank. (2001). *Operational Manual: Table of Contents* [Online] Available: <http://wbln0018.worldbank.org/institutional/manuals/opmanual.nsf>. [Aug. 2001] [This offers a comprehensive list of Bank's operational manuals]

World Bank. (2000). *Comprehensive Development Framework*. [Online] Available:

<http://www.worldbank.org/cdf/>. [October 2000] [This seeks a balanced approach development policy-making by considering interdependence of economic and non-economic factors]

World Bank. (2000). *Global Development Finance 2000: Analysis and Summary Tables*, 267 pp. Washington, D.C.: World Bank. [This explaining that as of 1998, only Denmark, Norway, the Netherlands, and Sweden have reached the target of 0.7% of GNP and that these states plus Luxembourg and France are the only ones that exceed the average contribution of 0.4 percent of GNP]

World Bank. (2000). *Reforming Public Institutions and Strengthening Governance*, 220 pp. Washington, DC: World Bank. [This explains details of World Bank's strategies regarding good governance through development assistance].

World Bank. (2000). *World Development Report 2000/2001: Attacking Poverty*. Washington, DC: World Bank. [This report uses multi-dimensional indicators of well being, such as education, health, and security, as well as levels of income and consumption and arguing that it is possible to reduce all dimensions of poverty]

World Bank. (1996). *The World Bank Participation Sourcebook*, 259 pp. Washington, D.C.: World Bank. [This book reviews development projects with participatory approaches in sixteen countries]

World Bank. (1989), *Articles of Agreement of the International Bank for Reconstruction and Development*. [Online] Available: <http://www.worldbank.org/html/extdr/backgrd/ibrd/art4.htm>. [Feb. 1989] [This agreement provides for weighted vote in decision-making in the World Bank]

World Bank. (1989). *Sub-Saharan Africa: From Crisis to Sustainable Growth*, 27 pp. Washington, D.C.: World Bank. [This book discusses various aspects of "deteriorating government" as factors behind the African economic decline].

World Bank Operations Evaluation Department. (1995). *World Bank, Learning from Narmada, Precis No.88* [Online]. Available: <http://wbln0018.worldbank.org/oed/oedoclib.nsf/e90210f184a4481b85256885007b1724/12a795722ea20f6e852567f5005d8933>. [This reports that in 1992, in reaction to strong international criticism against the Sardar Sarovar project, the World Bank conducted a review and imposed conditionality on the remaining loan to ensure adequate resettlement and economic rehabilitation of the affected people and environmental protection and formally canceled the remaining loan in 1993]

World Trade Organization (WTO). (1998). WTO Report of the Appellate Body on United States—Import Prohibitions of Certain Shrimp and Shrimp Products, WT/DS58/AB/R, 81 pp. Geneva: WTO [This case involves United States import ban on shrimp products based on its domestic environmental regulation aiming at protection of sea turtles]

WTO. (1994). Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, Legal Instruments—Results of the Uruguay Round vol. 31, 33 *International Legal Materials* 81-111 [This agreement covers WTO Members' rights and obligations regarding intellectual property rights in relation to international trade].

WTO. (1994). GATT Secretariat, *Developing Countries and Uruguay Round: An Overview*, COM.TD/W/512, 27 pp. Geneva: WTO. [This discusses positive and negative implications of the Uruguay Round Agreements on developing countries' trade policy and practices]

Notes

[1] TC Lewellen *Dependency and Development: An Introduction to the Third World* (1995) 60 [in the 1940s, economists from United Nations' Economic Commission for Latin America first proposed dependency theory, which seeks to explain underdevelopment as being caused by unequal exchange in international capitalism].

[2] SKB Asante, 'The Concept of Stability in Contractual Relations, in the Transnational Investment Process' in K Hossain (ed) *Legal Aspects of the New International Economic Order* (1980) 234, 244 [newly independent countries could not repudiate unfavorable agreements immediately upon political independence because of traditional doctrines, such as pacta sunt servanda, sanctity of contract, acquired rights, and state succession].

[3] See e.g. Aminioil v Kuwait (1982) 21 ILM 976, 1020-21 (unilateral termination of the oil concession

despite the stability clause in the concession agreement); *Saudi Arabia v Aramco* (1958) 27 IL Rep 117, 118 (interpreting the scope of the company's rights granted by the concession agreement that stipulated "exclusive concession for sixty years in the eastern part of Saudi Arabia"); N Schrijver, *Sovereignty Over National Resources: Balancing Rights and Duties* (1997) 175 (discussing international concessions involving natural resources with examples of concession agreements between the British-owned Anglo-Persian Oil Company and Iran and between the Sheikh of Abu Dhabi and the Petroleum Development Company Ltd.). Concession agreements are also used in mineral mining sectors. See M. Sornarajah, *The International Law on Foreign Investment* (1994) 31 [giving examples of mining agreements regarding gold fields in Ghana, which gave a concession for one hundred year, and similar concessions regarding ruby mines in Burma].

[4] In the colonial era, charter companies, such as the Dutch East Indies and West Indies Companies and the British East India Company, gained advantageous trading and jurisdictional treatment through agreements with local rulers. See Schrijver (note 5 above) 174. The former colonial powers continued to secure favorable trade relations after World War II by using tariff and non-tariff barriers to control imports from developing countries. See A Mukerji, 'Developing Countries and the WTO: Issues of Implementation' (2000) 34 *J of World Trade* 33, 36.

[5] Chorzow Factory Case (FRG v Pol), 1928 PCIJ ser. A3 No. 17, 47 (1928) (restitution to the foreign investor as remedy for nationalizing State's breach of its contractual obligations); Asante (note 4 above) 237-39 (theoretical basis of stability of transnational investment agreements originates from traditional Anglo-American doctrines based on freedom of contract). FV Garcia-Amador, *The Emerging International Law of Development: A New Dimension of International Economic Law* (1990) 126-29 (law and practice of compensation to foreign owners of nationalized property *International Economic Law* (1990) 126-29 [law and practice of compensation to foreign owners of nationalized property before World War II].

[6] Asante (note 4 above) 242 [stating that the application of the doctrine of *pacta sunt servanda* to transnational investment agreements should be effectively limited by the doctrine of *clausula rebus sic stantibus* under public international law]. Sornarajah (note 5 above) 348-49 [although foreign investor attempted to 'internationalize' transnational investment agreements so that the doctrine of pacta sunt servanda would be applicable, they could not override other basic principles of international law].

[7] Declaration on the Permanent Sovereignty over Natural Resources, GA Res 1803, UN GAOR, 17th Sess, Supp No 17, at 15, UN Doc A/5217 (1962).

[8] See also Garcia-Amador (note 7 above) 132-40 [evolution of the doctrine of permanent sovereignty from claims to the right to economic development and self-determination].

[9] See e.g.; Aminioil note 5 above, 1023 (the stability clauses did not absolutely prohibit nationalization and that a State may nationalize foreign owned property provided it pays the requisite compensation); *Aramco* note 5 above Rep, 171-172 (the concession agreements under Saudi Arabian law and using public international law to fill the gaps in the Saudi Arabian law);

[10] See generally Sornarajah (note 5 above) 339-40 (the host countries' law is generally regarded as applicable to the concession agreements in oil concession arbitrations).

[11] AA Akinsanya *The Expropriation of Multinational Property in the Third World* (1980) 78.

[12] See General Agreement on Tariffs and Trade, Oct. 30, 1947, Protocol Amending the General Agreement to Introduce Part IV on Trade and Development and to Amend Annex I, Feb. 8, 1965, 17 UST 1977, 572 UNTS 320 (Article XXXVI that deals with non-reciprocal trade benefits to developing countries).

[13] Articles of Agreement for International Development Association, Jan. 26, 1960, 11 UST 2284, 439 UNTS 249 (entered into force Sep 24, 1960).

[14] In 1960, the United Nations General Assembly formally adopted a target for financial flows to developing countries, pursuant to which developed countries were supposed to allocate one percent of their national income to international assistance including public loans and private investment. See Accelerated Flow of Capital and Technical Assistance to the Developing Countries, GA Res 1522, UN GAOR 948th plen mtg, at 1 (1960). The Pearson Report, while adopting the principle that rich countries should provide a certain level of development assistance to poorer countries, proposed a reduced level of

official development assistance ("ODA"). It recommended donor countries offer at least 0.7 percent of GNP preferably by 1979 and no later than 1980. See LB Pearson et al., *Partners in Development* (1970) 148-149 [hereinafter Pearson Report]. See also note 47 above (discussing subsequent reaffirmation of this target and the unsatisfactory response of donor countries).

[15] See e.g. Declaration on the Establishment of a New International Economic Order, GA Res. 3201, UN GAOR, 6th Spec. Sess, Supp No 1, at 3, UN Doc. A/9559 (1974) [hereinafter UN Declaration on NIEO] (stating that States 'shall correct inequalities and redress existing injustices' and 'make it possible to eliminate the widening gap between the developed and developing countries'); Charter of Economic Rights and Duties of States, GA Res 3281, UN GAOR., 29th Sess Supp No 31, pmlb., UN Doc. A/9631 (1975) [hereinafter U.N. Economic Charter] (calling for the establishment of a new international economic order designed to remove major hurdles to economic development in developed countries); Resolution on an International Development Strategy for the Third U.N. Development Decade GA Res. 35/56, UN GAOR., 35th Sess. Supp No, pmlb. § 2, UN Doc A35/56 (1981) [hereinafter International Development Strategy] (recognizing imbalances and inequities between developed and developing countries in the present system of international economic relations and seeking to restructure the existing international economic order). See also, Kamal Hossain (ed) *Legal Aspects of the New International Economic Order* (1980) 1, 2.

[16] See e.g.; *World Bank, Sub-Saharan Africa: From Crisis to Sustainable Growth* 23-30 (various aspects of "deteriorating government" as factors behind the African economic decline); R Gulhati, *The Political Economy of Reform in Sub-Saharan Africa: Report of the Workshops on the Political Economy of Structural Adjustment and the Sustainability of Reform* (1989) 3-4 ('policy and institutional distortions' as one of the crucial factors of the African economic crisis).

[17] In conventional neoclassical models, human welfare is measured by increases in consumption of goods and services. See J Weaver & K Jameson, *Economic Development: Competing Paradigms* (1981) 10-11. Accordingly, the conventional development economics literature focuses on removing barriers to economic growth. See PR Agénor & PJ Montiel, *Development Macroeconomics* (1996) 3. This was reflected in international discourses regarding development. In 1961, the United Nations General Assembly adopted an economic growth rate of five percent in national income as a target for developing countries. See Resolution on United Nations Development Decade: A Programme for International Economic Co-operation (I), UN Res. 1710, UN GAOR, 2d. Comm. 16th. Sess. , 1084th plen. mtg. at 1 (1961). The Pearson Report proposed as a target an annual growth rate of GNP 6%. See Pearson Report, note 14 above, 28.

[18] Declaration on the Right to Development, GA Res 41/128, UN GAOR, 41st Sess, Supp No. 53, at 186, UN Doc A/41/128 (1987) (dealing with development as a "comprehensive economic, social, cultural and political process"); *World Bank, Comprehensive Development Framework* (balanced approach development policy-making by considering interdependence of economic and non-economic factors), <<http://www.worldbank.org/cdf/>>; *World Bank, World Development Report 2000/2001: Attacking Poverty* (2000) (multi-dimensional indicators of well-being, such as education, health, and security, as well as levels of income and consumption and arguing that it is possible to reduce all dimensions of poverty). See also *United Nations Development Programme, Human Development Report* (2000) 139-268.

[19] Many observers would consider that another key issue for developing countries is the existing arrangements for the governance of the international economic order. Since, this issue relates primarily to the structure and functions of the international economic organizations, it can be viewed more as a problem of international organizations than of IDL. Therefore, is it treated as outside the scope of this essay. For more information on this issue, see, e.g. DD Bradlow, 'Critical Issues Facing the Bretton Woods System: The World Bank, the IMF, and Human Rights' (1996) 6 *Transnat'l L & Contemp Probs* 47 DD Bradlow 'Should the International Financial Institutions Play a Role in the Implementation and Enforcement of International Humanitarian Law?' (2002) 50 *U Kan LR* 695 DD Bradlow 'Stuffing New Wine Into Old Bottles: The Troubling Case of the IMF' (2001) 3 *J of Int Banking Reg* 9; DD Bradlow "'The Times They Are A-Changin': Some Preliminary Thoughts on Developing Countries, NGOs and the Reform of the WTO' (2001) 33 *Geo Wash Int LR* 503; C Grossman & DD Bradlow 'Are We Being Propelled Towards a People-Centered Transnational Legal Order?' (1993) 9 *Am U J Int L & Pol'y* 1

[20] WC Baum & SM Tolbert *Investing in Development: Lessons of World Bank Experience* (1985) 418-68 (cost-benefit analysis, cost recovery, and financial performance in project analysis).

[21] This view is reflected in a number of official documents. See, e.g., Articles of Agreement of the International Bank for Reconstruction and Development, July 22, 1944, art IV, § 10, 60 Stat 1440 [hereinafter World Bank Articles of Agreement] ('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.') <<http://web.worldbank.org/WBSITE/EXTERNAL/EXTABOUTUS/0,,contentMDK:20049557~menuPK:63000601~pagePK:34542~piPK:36600~theSitePK:29708,00.htm;l>>; Organization for Economic Development (OECD), *The OECD Guidelines for Multinational Enterprises* art. II (June 27, 2000), <<http://www.oecd.org/dataoecd/56/36/1922428.pdf>> (advising multinational enterprises to '[a]bstain from any improper involvement in local political activities').

[22] Shareholders maintain control over the board of directors through shareholder election or removal of directors and shareholder resolutions and approvals. See HG Henn & JR Alexander *Laws of Corporations* 3 ed (1983) 511-17. Moreover, the board of directors owes various duties primarily to the corporation and a fiduciary duty to shareholders and other beneficiaries as well as to the corporation. See id. 611-61.

[23] See, notes 71-73 below and the accompanying text for a discussion of these international forums and the growing ability of stakeholders to internationalize their concerns.

[24] See generally Sornarajah (note 5 above) 151-162 (the territoriality principle provides the basis for the host state's jurisdiction over foreign investors).

[25] FV Garcia-Amador (note 7 above,) 35-36 (two basic elements of IDL as the States' duties and responsibilities to cooperate for development and rights to development including preferential treatments in trade and development assistance); AH Qureshi, *International Economic Law* (1999) 338 [noting that IDL deals with an area of international economic law that can be a matter of controversy between developing and developed countries].

[26] The UNCTAD originally laid out the principles of the GSP. See Preferential or Free Entry of Exports of Manufactures and Semimanufactures of Developing Countries to the Developed Countries, UNCTAD, 2d Sess, Vol. I, Annex, Agenda Item 11, at 38, UN Doc. TD/97/Annexes (1968). See also EJ de Hann 'Integrating Environmental Concerns into Trade Relations' in *International Economic Law with a Human Face* (1998) 307, 309-310 (characteristics of the UNCTAD General System of Preferences). The principle gained a legal basis in the GATT as the 'Enabling Clause' agreed in the Tokyo Round in 1979 in accordance with Part IV. See Differential and More Favorable Treatment: Reciprocity and Fuller Participation of Developing Countries, Nov. 28, 1979, L/4903, GATT B.I.S.D. (26th Supp.) (1980) 203; Hann, *supra* at 311.

[27] Agreement on Search Term Begin Trade-Related Aspects of Intellectual Property Rights, Apr 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, Legal Instruments—Results of the Uruguay Round vol 31(1994) 33 ILM 81.

[28] UN Economic Charter, note 15 above, art. 6 ("All States share the responsibility to promote the regular flow and access of all commercial goods traded at stable..."); QURESHI, note 25 above, 337 (referring to commodity agreements as providing a cooperative or facilitative framework for development).

[29] M Bulajić, *Principles of International Development Law: Progressive Development of the Principles of International Law Relating to the New International Economic Order* 2 ed (1993) 287-98 [discussing the principle of preferential and non-reciprocal treatment for developing countries as a tool to change substantive inequity between developed and developing countries].

[30] Garcia-Amador, note 7 above, 126-31 (explaining principles concerning nationalization and compensation in traditional international law); SORNARAJAH, *supra* note 5, at 253-260 (describing the controversies over the standard formulation of compensation for nationalized foreign owned property).

[31] Bulajić , note 30 above, 170 (outlining international efforts to create principles regarding the regulation and treatment of transnational economic relations); Garcia-Amador, note 7 above, 159-71 (dealing with the treatment of foreign investment and the law governing State contracts with foreign investors); Sornarajah, note 5 above, 121-33 (discussing controversies in host State's responsibility for injuries to foreign investors).

[32] Sornarajah (note 5 above) 83-143 (examining host State's control over foreign investment, including

regulation of entry and other public policy requirements); Qureshi (note 25 above) 337 (regarding the regulation and protection of foreign investment as elements in the traditional normative framework of development); JW Salacuse, 'From Developing Countries to Emerging Markets: A Changing Role for Law in the Third World' 33 *Int Law* 875, 879, 885-86 [in discussing dominant development models noting that until 1980's focus was on regulation of foreign investment but since then it has been on the promotion of foreign investment]

[33] Bulajić (note 30 above,) 230(identifying "peaceful settlement of economic disputes" as one of the traditional principles incorporated in IDL); Garcia-Amador (note 7 above) 174-187 (examining law concerning settlement of disputes between foreign investors and States in relation to developing countries' claim of permanent sovereignty); Sornarajah (note 5 above) 55-65, 375-99 (political and other risks involved in foreign investment and the resolution of investment disputes through international tribunals and national courts). For the role of the World Bank Group in international investment disputes, see IFI Shihata, 'The Settlement of Disputes Regarding Foreign Investments: The Role of World Bank Group' in F Tschofen & AR Parra (eds) *The World Bank in a Changing World* (1991) 287-308; IFI Shihata 'Towards a Greater, Depoliticization of Investment Disputes: The Roles of ICSID and MIGA' in F Tschofen & AR Parra (eds) *The World Bank in a Changing World* (1991) 309-42.

[34] Bulajić (note 30 above) 168 (attempts to create the Multilateral Investment Guarantee Agency ("MIGA") to stimulate the capital flow particularly to developing countries). For details in the function of the MIGA, see Shihata, (note 33 above) 271-86.

[35] Bulajić (note 30 above) 14-20 [considering the indebtedness of developing countries as being the responsibility of not only developing countries but also international financial institutions and the lender countries].

[36] Qureshi (note 25 above) 337 (mechanisms to encourage developing countries to participate in international economic organizations).

[37] Qureshi (note 25 above) 337 (development assistance in the corporative or facilitative framework for development). See also Garcia-Amador (note 7 above) 83- 95 [discussing developing countries' claim to development assistance based on the right to development].

[38] Developing countries had articulated grievances with the prevailing economic order and attempted to shape a new economic order since the 1950s. See K Hossain, 'Introduction: General Principles, the Character of Economic Rights ad Duties of States and the NIEO' in K Hossain (ed) *Legal Aspects of the New International Economic Order* (1980) 1, 2. The developing world perceived disadvantages generally in international economic relations and particularly in international trade. See id. The first attempt to introduce a new economic order was made in 1952, when Chile raised this issue in terms of permanent sovereignty over natural resources in discussions relating to the Draft International Covenant on Human Rights. See Milan Bulajić, 'Legal Aspects of New International Order' in K Hossain (ed) *Legal Aspects of the New International Economic Order* (1980) 45, 46. Developing countries formally called for 'a new international economic order' at the Non-Aligned Summit in 1973. See Hossain (note 15 above) 1.

[39] In 1976, the U.N. Commission on Transnational Corporations created an Intergovernmental Working Group. This group proposed a draft text for the Code of Conduct on Transnational Corporations in its final report in 1982. See Bulajić (note 30 above) 169-70. For the full text of the Draft Code, see UN Commission on Transnational Corporation, Draft United Nations Code of Conduct on Transnational Corporations, UN Doc E/c.10/1984/S/5, (1984), reprinted in (1984) 23 *ILM* 626 [hereinafter Draft Code on Transnational Corporations]. Despite Commission's subsequent attempts to finalize the draft, some controversial issues remained unresolved. See UN Commission on Transnational Corporation, Report of the Secretariat: Compilation of the Formulation of the United Nations Code of Conduct on Transnational Corporations, UN Doc E/c.10/1984/S/5 (1984), reprinted in (1984) 23 *ILM* 602 [hereinafter UNCTC Report] (outstanding issues of the Draft Code on Transnational Corporations). See Bulajić (note 30 above) 170-74 (examining attempts by coalitions of developing countries to create United Nations Code of Conduct on Transnational Corporations and the problems that frustrated their attempts); E Kelly, "National Treatment" and the formulation of a Code of Conduct for Transnational Corporations' in K Hossain (ed) *Legal Aspects of the New International Economic Order* (1980) 137, 153-155 (developing countries' demands concerning national treatment in the Draft Code of Conduct on Transnational Corporations).

[40] In 1968, the UNCTAD II decided to initiate research on restrictive business practices. This research

was reduced to a set of principle and rules in subsequent sessions of an ad hoc working group within the UNCTAD. See Bulajić (note 30 above) 55. Parties agreed a set of principles and rules to govern restrictive business conduct in 1980. See The Set Search Term Begin Search Term End of Principle Search Term Begin Search Term End and Rules Search Term Begin Search Term End on Restrictive Business Practices, Search Term Begin Search Term End GA Res 35/63, UN GAOR, 35th Sess, Agenda Item 61, U.N. Doc. A/Res/35/63 (1980). See also Bulajić (note 30 above) 55-57.

[41] The first session of UN Conference on an International Code of Conduct on the Transfer of Technology was held in 1978 and the substantive part of the code was created in the first three sessions of the Conference. See Bulajić (note 30 above) 174-75. However, the subsequent sessions of the Conference was unsuccessful in establishing the International Code of Conduct for the Transfer of Technology as an essential component of the NIEO. See Bulajić (note 30 above) 175-77. For the text of the draft code, see Draft International Code of Conduct for the Transfer of Technology, UN Conference on Trade and Development, UN DOC TD/TOT/47, 1 (1985).

[42] World Bank Articles of Agreement, note 20 above, art. V § 3; Articles of Agreement of International Monetary Fund, July 22, 1944, art. XII § 3, 60 Stat. 1401. See generally UN Inst for Training and Research, *International Financial Institutions*, Module 5, at 12-13, 31 (the weighted allocation of voting power in the IMF and in the World Bank that takes account of differences in member states' contributions and shares). See also, DD Bradlow 'Stuffing New Wine Into Old Bottles: The Troubling Case of the IMF' (2001) 3 *J of Int Banking Reg*; A Burria 'The Governance of the IMF in a Global Economy' in A Burria (ed) *Challenges to the World Bank and the IMF: Developing Country Perspectives* (2003) (both articles discuss, *inter alia*, the problems with and reform of the weighted voting system in the IMF)

[43] U.N. Economic Charter, note 15 above. See generally Bulajić (note 30 above) 111 (examining proposals, negotiations, and adoption of the Charter of Economic Rights and Duties of States).

[44] The United Nations Center on Transnational Corporation was created in 1974 by a resolution adopted in the ECOSOC. See ESC Res 1903, UN ESCOR, 57th Sess, Supp. No. 1, at 13, UN Doc E/5570 (1974). It has subsequently been reduced to a program on foreign direct investment in the division on investment, technology and enterprise development of UNCTAD, see <www.unctad.org>.

[45] See note 40-42 above and accompanying text (dealing with efforts to establish United Nations Code of Conduct on Transnational Corporations and attempts to draft the Set of Principles and Rules on Restrictive Business Practices and International Code of Conduct for the Transfer of Technology).

[46] The 0.7 percent target proposed by the Pearson Report has been reaffirmed in subsequent international discourses on development. See, e.g., International Monetary Fund (IMF), Group of Twenty-Four Report on Changes in the Monetary System, 14 IMF Survey 154, reprinted in (1985) 24 ILM 1699, 1714 (developed countries agreed to spend 0.7 percent of GNP for ODA at United Nations Conference on Trade and Development VI in 1984). See also note 14 above (discussing the 0.7 percent target in the Pearson Report). Developing countries have demanded developed countries fulfill their internationally agreed obligation. See, e.g., id. (urging developed countries to accelerate their efforts to reach the target). Moreover, the target was reaffirmed in the United Nations Conference on Environment and Development (UNCED). See Agenda 21, UN GAOR, 47th Sess, Annex 2, 33.15, UN Doc A/CONF.151/4 (1992) ('Developed countries reaffirm their commitments to reach the accepted United Nations target of 0.7 per cent of the GNP for ODA and, to the extent that they have not yet achieved that target, agree to augment their aid programmes in order to reach that target as soon as possible...'). See also Statement of Johannesburg summit on Rio plus 10 (2002) <<http://www.un.org/esa/sustdev/index.html>> and Monterrey Consensus (financing for development meeting 2002/2003) <<http://www.un.org/esa/ffd/aconf198-3.pdf>> (both of these statements reaffirm this commitment) However, as of 2002, the average actual ODA contributions of the member states of the OECD Development Assistance Committee is 0.4 percent. See *World Bank, Global Development Finance 2004, Vol. 1, Analysis and Summary Tables* 4.3 (2004) <http://siteresources.worldbank.org/GDFINT2004/Home/20177154/GDF_2004%20pdf.pdf>. Only Belgium, Denmark, Ireland, Norway, Luxembourg, the Netherlands, and Sweden have reached the target. See id.

[47] See note 12 above (referring to Part IV of the GATT, which includes non-reciprocal benefits to developing countries).

[48] The UNCTAD originally laid out the principles of the GSP. See 'Preferential or Free Entry of Exports of Manufactures and Semimanufactures of Developing Countries to the Developed Countries'

UNCTAD, 2d Sess., Vol. I, Annex, Agenda Item 11, at 38, UN Doc TD/97/Annexes (1968). See also EJ de Hann, 'Integrating Environmental Concerns into Trade Relations' in *International Economic Law with a Human Face* (1998) 307, 309-310, 311 (characteristics of the UNCTAD General System of Preferences). The principle gained a legal basis in the GATT as the 'Enabling Clause' agreed in the Tokyo Round in 1979 in accordance with Part IV. See 'Differential and More Favorable Treatment: Reciprocity and Fuller Participation of Developing Countries', Nov. 28, 1979, L/4903, GATT BISD (26th Supp.) (1980) 203.

[49] This position is reflected in the Draft UN Code of Conduct on Transnational Corporations and the UN Charter on Economic Rights and Duties of States. U.N. Economic Charter, note 15 above, art. 2.2 (States have sovereign right to control foreign investment within their jurisdictions and that foreign investors shall not intervene in internal affairs of their host State); Draft Code on Transnational Corporations, note 40 above, art. 55 ('Entities of transnational corporations are subject to the jurisdiction of the countries in which they operate'). See also SR Chowdhury, 'Legal Status of the Charter of Economic Rights and Duties of States' in Kamal Hossain (ed) *Legal Aspects of the New International Economic Order* 79, 88 (1980) (noting that Article 2 of the Charter is regarded as "a classic restatement" of the Calvo Clause, which rejects the use of independent international tribunals to resolve investment disputes).

[50] UN Economic Charter, note 15 above, art. 2.2 ('Each state has the right: (a) To regulate and exercise authority over foreign investment within its national jurisdiction in accordance with its laws and regulations and in conformity with its national objectives and priorities'); Kelly, (note 40 above) 143 (the Charter and the Declaration is intended to ensure State's sovereign economic right, including the right to freely formulate the policy regime applicable to foreign investors).

[51] UN Economic Charter, note 15 above, art. 13.2 ('all States should facilitate the access of developing countries to the achievements of modern science and technology, the transfer of technology, and the creation of indigenous technology for the benefit of the developing countries.'). See also note 42 above (referring to proponent's attempts to create the International Code of Conduct for the Transfer of Technology).

[52] NIEO opponents find confusion between 'legal obligations' and 'political objectives' in the proponents' arguments for the NIEO and attempt to distinguish the former from the latter. See Bulajić (note 30 above) 229. From this perspective, States agree to give development assistance or to establish a new international investment regime as a 'political objective', but not as a "legal obligation." See id.

[53] Bulajić (note 30 above) 230-31 (developed countries oppose the NIEO as disregarding recognized legal principles including international minimum standards to protect foreign private property and investment rights).

[54] UNCTC Report, note 40 above, 35 (some States insisted on including "the payment of prompt, adequate and effective compensation" in accordance with international law in the Code of Conduct on TNC's); Bulajić (note 30 above) 231 (the idea behind opponents' legal arguments as the following four traditional principles of international law: (1) freedom of contract, (2) pacta sunt servanda, (3) protection of foreign investor's property, and (4) peaceful settlement of economic disputes); Kelley (note 40 above) 144-47 (discussing developed countries' strong concern about discrimination against transnational corporations in creating the Code of Conduct on Transnational Corporations).

[55] UNCTC Report, note 40 above, 36 (some States opted for dispute settlement in other countries than the host State and demanded to include specific reference to international arbitrations); OECD Guideline, *supra* note 21, art. I 9 ('The use of appropriate international dispute settlement mechanisms, including arbitration, is encouraged as a means of facilitating the appropriate international dispute settlement mechanisms, including arbitration, is encouraged as a means of facilitating the resolution of legal problems arising between enterprises and host country governments.');

Chowdhury (note 50 above) 87-88 (opponents' attempts to amend Article 2 of the Economic Charter to authorize appeals on investment disputes to international forums after parties exhausted domestic remedies in the host State).

[56] See, e.g. I Brownlie, *Principles of Public International Law* 4 ed (1990) (the principles of the sovereignty and equality of states as the fundamental doctrine of the law of nations).

[57] Bulajić (note 30 above) 262-63 (the right to economic self-determination and permanent sovereignty over natural resources is regarded as fundamental in international law and that the principle of sovereign

equality in States' economic relations emanates from and is applied to the right to self-determination without controversy). See also note 9 above (the Declaration on the Permanent Sovereignty over Natural Resources and its evolution from the principle of self-determination).

[58] UNCTC report, note 40 above, 17 (proponents considered the principle of permanent sovereignty over natural resources and economic activities well-recognized in international law and U.N. resolutions); Kelly (note 40 above) 148-52 (examining developing countries' attempt to ensure States' power over transnational corporations including "full exercise by the home country of its permanent sovereignty over all its wealth, natural resources and economic activities").

[59] See, e.g. UNCTC Report, note 40 above, 17 (some States insisted on including reference to international law in Article 6 of Draft Code on Transnational Corporations to qualify the States' sovereign power over foreign investors).

[60] See also Chowdhury (note 50 above) 88 (developing countries' rejections of independent international tribunals to resolve investment disputes); Kelly (note 40 above) 143-44 (from the perspective of developing countries, Article 2.2 of the UN Economic Charter is regarded as a principle of appropriate compensation under the domestic law of the expropriating State).

[61] The opponents' position is reflected, for example, in the following provisions of the OECD Guidelines. 'Governments have the right to prescribe the conditions under which multinational enterprises operate within their jurisdictions, subject to international law.' OECD Guidelines, note 20 above, art I., 7. 'Governments adhering to the Guidelines set them forth with the understanding that they will fulfil [sic] their responsibilities to treat enterprises equitably and in accordance with international law and with their contractual obligations' *Id.* art. I, 8. See also note 54 above and the accompanying text (opponents' adherence to certain minimum international standard in treating foreign investors and their properties).

[62] See, note 55 above (dealing with opponents' adherence to international legal principles includes pacta sunt servanda, and prompt, effective, and adequate compensation); *supra* note 61 and the accompanying text (opponents' arguments for resolution of investment disputes in international tribunals).

[63] See Brownlie (note 57 above). See also, OECD 'Declaration by the Governments of OECD Member Countries and Decisions of the OECD Council on International Investment and Multinational Enterprises' 21 June 1976 in *International Investment* (Rev ed 27 June 2000) II.1 (Member States should give another Member country or its nationals 'national treatment,' which is "consistent with international law and no less favorable than that accorded in like situations to domestic enterprises"). The Declaration further state "[t]hat Member countries will consider applying "national treatment" in respect of countries other than Member countries," *id.*, at II.2., <http://www.oecd.org/document/53/0,2340,en_2649_34887_1933109_1_1_1,100.html>.

[64] See Hossain (note 15 above) 5-6 (in NIEO instruments, developing countries attempt to seek legal protection from coercive forces and affirmative action to remedy disadvantageous conditions); Kelly, note 40 above, 150 (from developing countries' standpoint, States may give preferential treatment to their nationals in seeking to achieve certain national economic and developmental goals).

[65] See note 18 above and the accompanying text (discussing multidimensionality of development in the modern view)

[66] See generally RF Mikesell & L Williams *International Banks and the Environment* (1992) (several case studies in which poor assessments of projects costs have resulted in excessive environmental costs); B Rich *Mortgaging the Earth: The World Bank, Environmental Impoverishment, and the Crisis of Development* (1994) (the World Bank's often destructive environmental and political impact on millions of people); B Morse & TR Berger *Sardar Sarovar: The Report of the Independent Review* (1992) (describing how Sardar Sarovar projects, which faced resistance from tribal peoples living in the project area, have adversely effected these peoples).

[67] A third important factor is improvements in information and communication technology. This technology enable business, investors, and NGOs around the World to quickly learn about and react to developments around the world. See C Grossman & DD Bradlow (note 19 above) 11. This factor receives less attention in this paper because, to date, it has had less direct impact on IDL than the other two.

[68] See D HUNTER ET AL., ‘Introduction’ in D Hunter, J Salzman & D Zaelke (eds) *International Environmental Law and Policy* v-vi (1998) (‘human economic activity threatens to surpass the ecological limits of the biosphere (if it has not already done so in certain instance’).

[69] See e.g. Convention on Environmental Impact Assessment in a Transboundary Context, Feb. 25, 1991, 30 ILM 802 [hereinafter Espoo Convention] (not yet in force as of Nov. 25, 1999) (‘Mindful of the need and importance to develop anticipatory policies and of preventing, mitigating and monitoring significant adverse environmental impacts in general and more specifically in a transboundary context’); Hunter et al., (note 69 above) 360. See also id. 366 (environmental impact assessment as the ‘process for examining, analyzing and assessing proposed activities, policies or programs to integrate environmental issues into development planning and maximize the potential for environmentally sound and sustainable development’).

[70] See DD Bradlow ‘International Organizations and Private Complaints: The Case of the World Bank Inspection Panel’ (1994) 34 *Va J Int L* 553, 553-54 (function of the Inspection Panel as a forum in which nongovernmental parties can hold an international organization directly responsible for the harm resulted from the violation of its own rules and procedures). See generally, IFI Shihata *The World Bank Inspection Panel: In Practice* (2000). (the objectives and mechanism of the Inspection Panel and its operation); *Accountability at the World Bank: The Inspection Panel 10 Years On*, The Inspection Panel (2003).

[71] For the details of the function of these human rights commissions, see generally H Hannum (ed)*Guide to International Human Rights* 3 ed (1999) 11-14 (methods by which international human rights obligations can be enforced). See also, LA Malone & S Pasternack, *Defending the Environment: Civil Society Strategies to Enforce International Environmental Law* (2004).

[72] See e.g. ,*Jota v Texaco, Inc.* 157 F.3d 153 (2d Cir, 1998) (consolidated appeals of two class actions brought by residents of Ecuador and Peru against Texaco in New York for environmental and personal injuries allegedly caused by Texaco’s exploitation of oil fields in a river basin in Ecuador).

[73] This can be seen for example in the adoption of corporate codes of conduct and in the increasing attention being paid to the issue of corporate social responsibility.

[74] See The Global Compact <<http://www.unglobalcompact.org>>.

[75] See JB Battle et al. *Environmental Decisionmaking and NEPA* 2d ed (1994).

[76] Note this is taking place at the same time as the regulatory framework for projects is being globalized. See, e.g., World Bank and IFC Safeguard Policies, available at World Bank website, <www.worldbank.org>, and at IFC website, <www.ifc.org>.

[77] Examples of such measures would be laws that deny women the right to participate in meetings and laws that do not recognize the property rights of indigenous people or women.

[78] Examples of such measures could include laws that require all documents to be submitted in one official language, rather than in the languages of indigenous peoples, laws that deprive people of their internationally recognized rights to free speech and association, the protection of the integrity of their person and the failure of some governments to effectively enforce their laws against certain social groups who take action to limit participation in development by other groups.

[79] See, e.g., World Bank, *The World Bank Participation Sourcebook* (1996) 3-4 (project planning with the conventional “external expert stance” in which sponsor and designers collect information by using experts but, may fail to listen to the voices of local stakeholders or disadvantaged people) <<http://www.worldbank.org/wbi/sourcebook/sbhome.htm>>. The Bank currently advocates stakeholder participation that involves all parties concerned, such as the poor and socially disadvantaged, NGOs, private sector organizations, local and national government officials, and Bank staff. See id., 6-7. For examples of participatory development, see id., 17-120 (reviewing development projects with participatory approaches in sixteen countries).

[80] The time period for which the project sponsors and contractors remain liable for damage may be set by contractual warranties, by statute or may depend on their ongoing relationship with the project.

[81] Declaration on the Right to Development, note 18 above, art. 2.2 (‘All human beings have a responsibility for development, individually and collectively, taking into account the need for full respect

for their human rights and fundamental freedoms as well as their duties to the community...’)

[82] Id. art.1.1 ('The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.').

[83] Id., 2.3. ('States have the right and the duty to formulate appropriate national development policies that aim at the constant improvement of the well-being of the entire population and of all individuals, on the basis of their active, free and meaningful participation in development and in the fair distribution of the benefits resulting therefrom.').

[84] Universal Declaration on Human Rights, GA Res 217A, UN GAOR, 3d Sess., pt. I, 71, UN Doc A/810 (1948).

[85] International Convention on Civil and Political Rights. Dec. 16, 1966, 999 UNTS 171; International Covenant on Economic Social and Cultural Rights, Dec. 16. 1966, 993 UNTS 3; Convention on the Rights of the Child, Nov. 20, 1989, (1989) 28 ILM 1456 [hereinafter CRC]; Convention on the Elimination of All Forms of Discrimination Against Women, opened for signature Mar. 1, 1980, (1980) 19 ILM 33 [hereinafter CEDAW]; International Convention on the Elimination of All Forms of Racial Discrimination, Dec. 21, 1965, 660 UNTS 195. See also, Vienna Declaration and Programme of Action, UN Doc A/CONF.157/24, pt. I, 20 (1993), reprinted in (1993) 32 I.L.M. 1661.

[86] Declaration on the Right to Development, note 18 above.

[87] Declaration of the U.N. Conference on the Human Environment, June 16, 1972 UN Doc A/Conf. 48/14/Rev.1, reprinted in (1972) 11 ILM 1416.

[88] Rio Declaration on Environment and Development, UN Doc. A/CONF.151/Rev. 1 (1992), reprinted in (1992) 31 ILM 874 [hereinafter Rio Declaration]. Johannesburg Declaration on Environment and Sustainable Development, http://www.un.org/esa/sustdev/documents/WSSD_POI_PD/English/POI_PD.htm.

[89] United Nations Framework Convention on Climate Change, May 29, 1992, 31 I.L.M. 849 (1992) [hereinafter Climate Change Convention]; Convention on Biological Diversity, June 5, 1992, 31 I.L.M. 818 (1992) [hereinafter Biodiversity Convention].

[90] See Rio Declaration, note 86 above, principle 27 ('States and people shall cooperate in good faith and in a spirit of partnership in the fulfillment of the principles embodies in this Declaration...').

[91] See Rio Declaration, note 86 above, principles 6-7 (putting priority on 'the special situation and needs of developing countries, particularly the least developed and those most environmentally vulnerable' while highlighting developed countries' responsibility in consideration of the burdens they impose on the global environment). The five-year review of UNCED conducted in 1997 highlighted the principle of common but differentiated responsibilities in formulation and implementation of national strategies for sustainable development while calling for commitments of all parties concerned in both developed and developing countries. See Programme for the Further Implementation of Agenda 21, GA Res S19-2, UN GAOR, 19th Special Sess 11th plenary mtg at 22, 24, 26 UN Doc A/S19-2 (1997) [hereinafter Programme on Agenda 21].

[92] See generally Note 70 above (definition of environmental impact assessment and its application in the transboundary context in Espoo Convention).

[93] See Rio Declaration, note 86 above, principle 15 ('Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.').

[94] See Rio Declaration, note 86 above, principle 27 ('States and people shall cooperate in good faith and in a spirit of partnership in the fulfillment of the principles embodies in this Declaration...').

[95] For details, see Int'l Fin. Corp., Operational Guidelines for the Office of the IFC/MIGA Compliance Advisor/Ombudsman,<[http://www.caocompliance.org/pdfs/FINAL%20CAO%20GUIDELINES%20IN%20ENGLISH%20\(09-20-00\).doc](http://www.caocompliance.org/pdfs/FINAL%20CAO%20GUIDELINES%20IN%20ENGLISH%20(09-20-00).doc)>

[96] In addition to the World Bank, the African, Asian and Inter-American Development Banks, and the

European Bank for Reconstruction and Development also have inspection mechanisms. Information on these mechanisms are available at their websites: African Development Bank, www.afdb.org; Asian Development Bank, www.adb.org; European Bank for Reconstruction and Development, www.ebrd.org; Inter-American Development Bank, www.iadb.org. For a comparative analysis of these mechanisms see, DD Bradlow 'Private Complainants and International Organizations: A Comparative Study of Independent Inspection Mechanisms in International Financial Institutions' (2005) 36 *Georgetown J Int L* (forthcoming)

[97] See Declaration on the Right to Development, note 18 above, art. 6.1 ('All States should co-operate with a view to promoting, encouraging and strengthening universal respect for and observance of all human rights...'). See also Grossman & Bradlow (note 68 above) 3 (United Nations recognition of protection of human rights as an international obligation, provides the basis of international organizational supervision over human rights).

[98] See Declaration on the Right to Development, note 18 above, art. 6.1 (States' duty to cooperate in promoting universal human rights 'without any distinction as to race, sex, language or religion'). There are specific UN conventions that covers human rights of women. See CEDAW, note 85 above and children, see CRC, note 85 above. The UN Commission on Human Rights has also proposed a Draft United Nations Declaration on The Rights of Indigenous Peoples, E/CN.4/Sub.2/1994/2/Add.1 (1994) 34 ILM 541, 546, <<http://ods-dds-ny.un.org/doc/UNDOC/GEN/G94/125/10/PDF/G9412510.pdf?OpenElement>>. For child labor, see International Labor Organization Convention Search Term Begin Concerning the Prohibition and Immediate Elimination of the Worst Forms of Child Labor (June 17, 1999) 38 ILM 1207. In addition to these formal efforts, international civil society has reacted to business practices that fail to incorporate human rights considerations. See also P Malanczuk 'Globalization and the Future Role of Sovereign States' in International Economic Law with a Human Face, note 49 above, 45, 58-59 (examples of international protests against Shell for disregard of human rights of minority rights activists in Nigeria and against Nike for unfair labor practices including use of child labor in developing countries).

[99] In 1992, in reaction to strong international criticism against the Sardar Sarovar project, the World Bank conducted a review and imposed conditionality on the remaining loan to ensure adequate resettlement and economic rehabilitation of the affected people and environmental protection. In 1993, the Bank formally canceled the remaining loan. See *World Bank Operations Evaluation Dep't, World Bank, Learning from Narmada*, Precis No.88 (1995) <<http://wbln0018.worldbank.org/oed/oedoclib.nsf/e90210f184a4481b85256885007b1724/12a795722ea20f6e852567f5005d8933>>. For a detailed review of Sardar Sarovar Dam project, see Morse & Berger, note 67 above.

[100] The export credit agencies of developed countries refused to give export credit support unless Turkey satisfied four conditions designed to address international concerns about the project's adverse impacts on human rights and the environment. See JM Adams 'Environmental and Human Rights Objections Stall Turkey's Proposed Ilisu Dam' (2000) 11 *Colo. J Int Envtl L & Pol'y* 173, 175-76. The conditions include creation of internationally acceptable resettlement plan, establishment of upstream water treatment plant, maintenance of downstream water flow, and protection of archeological sites. See id. 176.

[101] See Report of the World Bank Inspection Panel, 'CAMEROON: Petroleum Development and Pipeline Project (Loan No. 7020-CM); and Petroleum Environment Capacity Enhancement (CAPECE) Project' (Credit No. 3372-CM) (July 24, 2003) <<http://wbln0018.worldbank.org/IPN/ipnweb.nsf/WReport/081ABED76D5636B485256C93005F152A>>.

[102] See *Policy Dep't & Review Dep't, IMF, Review of the Funds Experience in Governance Issues*(2001) 8-9 (IMF regards good governance as an important condition to effectively attain the objectives of IMF-supported projects and promotes it through prior consultations with States seeking assistance) <<http://www.imf.org/external/np/gov/2001/eng/gov.pdf>>. The IMF highlights importance of cooperation with other multinational institutions including the World Bank and the OECD to facilitate good governance in the borrowing country. See id., 20-21. For details of World Bank's strategies regarding good governance through development assistance, see *World Bank, Reforming Public Institutions and Strengthening Governance* (2000)

<<http://www1.worldbank.org/publicsector/civilservice/Reforming.pdf>>. See also 'Recognized Labour Standards and Trade' in *International Economic Law with a Human Face*, note 49 above, 79, 80-81 (the

use of trade sanction against States that fails to protect labor rights as a key issue in debates on international trade and labor standards).

[103] See O Schachter, ‘The Erosion of State Authority and Its Implications for Equitable Development’ in *International Economic Law with a Human Face*, note 49 above, 31, 36-38 (active roles played by transnational civil society, including private business, NGOs, and scientific and technical experts, in promoting international development).

[104] Rio Declaration, note 86 above, principle 10 ('Environmental issues are best handled with the participation of all concerned citizens, at the relevant level.'). Rio Declaration emphasizes participation of women, the youth, and indigenous people and local communities in achieving sustainable development. See id. principles 20-22.

[105] Climate Change Convention, note 87 above, art 4.1(i), (States shall '[p]romote and cooperate in education, training and public awareness related to climate change and encourage the widest participation in this process, including that of non-governmental organizations').

[106] Biodiversity Convention, note 87 above, pmlb. ('Recognizing the close and traditional dependence of many indigenous and local communities embodying traditional lifestyles on biological resources, and the desirability of sharing equitably benefits arising from the use of traditional knowledge, innovations and practices relevant to the conservation of biological diversity and the sustainable use of its components'). The Convention also stresses women's vital role in maintaining and promoting sustainable use of biological diversity and recognizes the need for women's participation in policy-making and implementation to protect biological diversity. See id.

[107] WTO Report of the Appellate Body on United States—Import Prohibitions of Certain Shrimp and Shrimp Products, WT/DS58/AB/R (Oct. 12, 1998) [hereinafter Shrimp-Turtle case] (United States import ban on shrimp products based on its domestic environmental regulation aiming at protection of sea turtles), available at http://www.wto.org/english/tratop_e/dispu_e/58abr.pdf; GATT Dispute Settlement Panel Report on United States Restrictions on Imports of Tuna, 33 ILM 839 (1994); GATT Dispute Settlement Panel Report on United States Restrictions on Imports of Tuna, 30 ILM 1594 (1991) (dealing with United States import ban on tuna products from Mexico, which did not introduce dolphin-friendly fishing practices required under United States environmental law). In Shrimp-Turtle case, several NGOs submitted amicus curiae briefs to support the United States environmental regulation while the appellees (India, Pakistan, Thailand, and Malaysia) argued against the NGOs' submission of amicus briefs. See Shrimp-Turtle case, above, 12-13, 18, 28.

[108] See Rio Declaration, note 86 above, principle 4 ('In order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it.); Programme on Agenda 21, note 89 above, ¶ 23 ('Economic development, social development and environmental protection are interdependent and mutually reinforcing components of sustainable development.').

[109] See G Loibl, 'The World Bank Group and Sustainable Development' in *International Economic Law with a Human Face*, note 48 above, 513, 520-25 (Bank's operational policies and procedures relevant to environmental protection and sustainable development). For a comprehensive list of Bank's operational manuals, see World Bank, *Operational Manual: Table of Contents* <<http://wbln0018.worldbank.org/institutional/manuals/opmanual.nsf>>.

[110] For a list of relevant guidelines, see Env't Div, IFC, *Environmental, Health and Safety Guidelines* <<http://www.ifc.org/enviro/enviro/pollution/guidelines.htm>>

n.100. Projects supported by IFC are also subject to relevant parts of the Bank's Operational Manuals. See IFC, *Safeguard Policies* (listing relevant operational manuals) <<http://www.ifc.org/ifcext/enviro.nsf/Content/Safeguardpolicies>>.

[111] See The Ten Principles of the Global Compact. <http://www.unglobalcompact.org/Portal/?NavigationTarget=/roles/portal_user/aboutTheGC/nf/nf/theNinePrinciples>. The ten principles include 2 principles dealing with human rights, 4 dealing with labour rights, 3 dealing with environment and 1 dealing with corruption.

[112] ISO introduced a series of quality management standards (ISO 9000) See ISO, *ISO 9000 and ISO 14000 in Plain Language* <<http://www.iso.org/iso/en/iso9000-14000/index.html>>. ISO created a series

of environmental management standards (ISO 14000) to address the following issues: environmental management systems, environmental auditing and related investigations, environmental labels and declarations, environmental performance evaluation, and life cycle assessment. See Tech. Comm. 207, ISO, *What is ISO 14000?* <<http://www.tc207.org/faq.asp?Question=2>>.

[113] See e.g. Levi Strauss & Co, *Social Responsibility/Global Sourcing and Operating Guidelines* (corporate guidelines taking into account of environment, labor, and human rights issues in business partners and the host country), <<http://www.levistrauss.com/responsibility/conduct/guidelines.htm>>; Nike Inc., *Labor Code of Conduct* ('zero tolerance for under-age labor') <<http://www.nike.com/nikebiz/gc/mp/pdf/English.pdf>>; Shell Oil Co., *Our Policy and Principles*, (information on Shell's corporate policy regarding business principles, health and environment, and sustainable development) <<http://www.countonshell.com>>.

[114] Good examples of sectors where the regulatory framework has been effectively globalized are the hydro sector and the mining sector. In both these sectors, the conflict generated around major projects resulted in sector-wide reviews that attempted to establish general principles to guide conduct in the sector. See.

[115] Declaration on the Right to Development, note 18 above, art 1.1

[116] Declaration on the Right to Development, note 18 above, arts 3.1, 6.3, and 8.1

[117] Declaration on the Right to Development, note 18 above, art 2.2

[118] Declaration on the Right to Development, note 18 above, art 8.2

[119] World Commission on Dams, *Dams and Development: A New Framework for Decision Making* (Earthscan 2000).

[120] See Schachter, (note 100 above) 43-44 (the present state-based structure still constitutes the general framework of governance in international relations, although noting increasing influence of non-state actors). See also Rio Declaration, note 86 above, principle 2 ('States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources'); Climate Change Convention, note 87 above, pmlb. ('Reaffirming the principle of sovereignty of States in international cooperation to address climate change').

[121] See Rio Declaration, note 86 above, principle 8 ('To achieve sustainable development and a higher quality of life for all people, States should reduce and eliminate unsustainable patterns of production and consumption...'); Programme on Agenda 21 note 84 above, 28 (stating that unsustainable patterns of consumption in developed countries continue exacerbating environmental degradation and that developed countries should make efforts to change the unsustainable consumption patterns).

[122] See Grossman & Bradlow (note 68 above) 12-14 (advances in information technology have enabled nongovernmental actors to share information and spread activities across border and thus undermines States' authority to regulate and sanction their activities).

Biographical Sketch

Daniel D. Bradlow is Professor of Law and Director of the International Legal Studies Program, and Coordinator of the SJD, Hubert H. Humphrey Fellowship and International Visitors Programs at American University- Washington College of Law in Washington, D.C. where he specializes in international economic law. His current scholarship focuses on the international financial institutions, the international legal aspects of sustainable and equitable development, and the legal aspects of debt and financial management. He is a Senior Special Fellow in the Legal Aspects of Debt and Financial Management Programme of the United National Institute on Training and Research (UNITAR), and a member of the Board of Directors of ILEAP (International Lawyers and Economists Against Poverty) and of the Governing Board of the African Law Institute. He has worked as a Consultant to the World Dams Commission, MEFMI (The Macroeconomic and Financial Management Institute for Eastern and Southern Africa), Pole-Dette, the World Bank, the African Development Bank, the United Kingdom's Department for International Development and the MacArthur Foundation and served as a member of the International Law Association's Committee on Accountability of International Organizations and as an advisor to the Rethinking Bretton Woods Project. In 1996 he was a Visiting Professor at the Community Law Centre at the University of the Western Cape, South Africa. He has lectured in the United States and

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Prior to joining WCL, Professor Bradlow was a Research Associate at the International Law Institute and a consultant to the United Nations Centre on Transnational Corporations, as well as an attorney in private practice.

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SAMPLE CHAPTERS