

1986

The World Bank Group

Jane D. Weaver

Ann Wilcox-Staats

Follow this and additional works at: <http://digitalcommons.wcl.american.edu/auilr>



Part of the [International Law Commons](#)

Recommended Citation

Weaver, Jane D. and Ann Wilcox-Staats. "The World Bank Group." American University International Law Review 1, no. 1 (1986): 391-411.

This Article is brought to you for free and open access by the Washington College of Law Journals & Law Reviews at Digital Commons @ American University Washington College of Law. It has been accepted for inclusion in American University International Law Review by an authorized administrator of Digital Commons @ American University Washington College of Law. For more information, please contact fbrown@wcl.american.edu.

THE WORLD BANK GROUP

INTRODUCTION

The World Bank Group consists of three affiliated organizations: the International Bank for Reconstruction and Development (IBRD), the International Development Association (IDA), and the International Finance Corporation (IFC).¹ The IBRD and the IDA together constitute the World Bank.² Lawyers³ and economists work in tandem to effect the Bank's central purpose, namely to promote economic and social progress in developing nations. The IFC also advances the same purpose by investing in commercial enterprises in developing countries.⁴ Together, these institutions engage in a variety of projects to serve as a catalyst to stimulate investments.⁵

This section discusses significant legal developments within the World Bank Group. Part I focuses on current commercial activities including a detailed discussion of the new cofinancing initiative. Part II discusses several controversies arising from World Bank lending programs. Part III reviews recent changes in World Bank membership, administration and legal affairs.

1. See generally WORLD BANK, *THE WORLD BANK AND INTERNATIONAL FINANCE CORPORATION* (Apr. 1985) (providing discussion of each organization's history and role); J. TAYLOR, *A LAWYER'S VIEW OF DEVELOPMENTS IN WORLD BANK COFINANCING WITH PRIVATE BANKS* (Feb. 1984) (stating that the World Bank Group is the world's largest multilateral development aid agency and the largest non-resident borrower in virtually all countries in which it borrows).

2. WORLD BANK, *THE WORLD BANK AND INTERNATIONAL FINANCE CORPORATION* 3 (Apr. 1985).

3. The World Bank's Legal Department, comprised of approximately seventy attorneys from thirty-three countries, is headed by I.F. Shihata of Egypt. Interview with Louis Forg t, Legal Advisor, Policy and General Affairs, World Bank, in Washington, D.C. (Nov. 19, 1985) [hereinafter cited as Forg t Interview I]. The IFC has twenty-four attorneys in its own legal department. Written responses to questions of Jane D. Weaver by Bill Brannigan, World Bank Information and Public Affairs Office (Dec. 20, 1985) [hereinafter cited as Brannigan Responses I] (available at the editorial offices of the American University Journal of International Law and Policy, Washington, D.C.).

4. WORLD BANK, *THE WORLD BANK AND INTERNATIONAL FINANCE CORPORATION* 3 (Apr. 1985).

5. Another legally complex World Bank development—the Multilateral Investment Guarantee Agency (MIGA)—is discussed in this issue by I.F. Shihata, Vice President and General Counsel of the World Bank. See I.F. Shihata, *The Settlement of Disputes Regarding Foreign Investment: The Role of the World Bank, with Particular Reference to ICSID and MIGA*, 1 AM. U.J. INT'L L. & POL'Y 97 (1986).

I. CURRENT WORLD BANK COMMERCIAL LENDING ACTIVITIES

A. SOURCES OF WORLD BANK FUNDING

1. *Interest on Investments, Loan Repayments and Loan Sales*

The World Bank has several sources of income for funding development projects. The primary sources of income include paid-in capital of its member countries, borrowings on world capital markets, and net income from its operations.⁶ Although the World Bank derives a substantial portion of its income from these three sources, these funds are not sufficient to meet the increased worldwide need for development financing.

The World Bank supplements its income by selling participation rights in the Bank's loan portfolio to private parties or other public entities. This program entitles public or private purchasers to receive part of the scheduled loan repayments that borrowing countries owe to the Bank.⁷ The purpose of the program is to generate funds from outside sources for development projects, thereby reducing the Bank's reliance on direct contributions from World Bank member countries.⁸

In 1985, the Bank initiated a pilot program to sell up to \$300 million in outstanding World Bank loans.⁹ At least seventeen countries already agreed to the sale of their loans, and so far, in twenty-three transactions, the Bank completed sales of over \$120 million of fixed rate loans made before 1980.¹⁰ The Bank will analyze the role of loan sales in its funding strategy in the fall of 1986.¹¹ The results achieved in this pilot program should complement the member nations' upcoming negotiations for a general capital increase.

6. TAYLOR, *supra* note 1, at 4; Washington Post, Jan. 20, 1986, at 37, col. 1 (noting that the World Bank made a record profit of \$695 million in fiscal year 1985).

7. Brannigan Responses I, *supra* note 3.

8. *Id.*

9. WORLD BANK, 1985 ANNUAL REPORT 12 (1985) [hereinafter cited as WORLD BANK ANNUAL REPORT]. In earlier years, the Bank sold loans worth \$3 billion to more than 600 commercial banks, institutional investors and government agencies. In 1980, however, high market interest rates, contrasted with the lower rate of interest on World Bank loans, led the Bank to discontinue the program. Brannigan Responses I, *supra* note 3.

10. Brannigan Responses I, *supra* note 3.

11. *Id.*

2. *Negotiations for a General Capital Increase*

a. *The International Bank for Reconstruction and Development*

The International Bank for Reconstruction and Development (IBRD) relies on general capital increases to expand its lending capacity and to fund development projects throughout the world. At the 1985 annual meeting, the Board of Governors agreed to begin negotiations for a general capital increase. The Bank previously authorized such an increase in January 1980.¹²

The Bank's member countries must resolve several issues before authorizing a general capital increase.¹³ First, they must reach a consensus on the Bank's future financial needs, which are largely dependent on the Bank's projected role in world financial markets.¹⁴ Second, the Bank's members must determine how much of the capital increase each country must pay immediately, how much may be left on call, and which national currencies will be acceptable for payment of the capital increase. Third, the question of the valuation of the Bank's capital must be resolved. Finally, the members must address the important legal issue of preemptive rights.¹⁵ At the time of this writing, the Bank

12. E. ROTBERG, *THE WORLD BANK: A FINANCIAL APPRAISAL* 25 (1981) (available at the World Bank, Washington, D.C.).

13. Forg t Interview I, *supra* note 3.

14. See Washington Post, Oct. 8, 1985, at A1, col. 1 (noting that one plan for the Bank's future, proposed by United States Secretary of the Treasury James Baker, calls for the IBRD to increase its lending by fifty percent over the next three years, from \$6 billion to \$9 billion). Almost all of this proposed increase would be earmarked for structural adjustment loans. *Id.* See also *infra* notes 81-89 and accompanying text (discussing structural adjustment loans).

15. Articles of Agreement of the International Bank for Reconstruction and Development, *opened for signature* Dec. 27, 1945, art. II(3), 60 Stat. 1440, T.I.A.S. No. 1502, 2 U.N.T.S. 134 [hereinafter cited as IBRD Articles]. Preemptive rights permit IBRD members to purchase additional shares when the Bank increases its authorized capital, thereby allowing them to keep their rank and relative power. Forg t Interview I, *supra* note 3. The IBRD uses International Monetary Fund (IMF) quotas, calculated on the basis of certain economic parameters, to determine a member's IBRD capital subscription as well as the allocation of optional shares the country can purchase. Brannigan Responses I, *supra* note 3. The IMF quota system and the related IBRD capital structure are significant because they determine the ranking of IBRD members. Relative positions of influence, such as voting power, for the most part, are based on a country's number of shares. Each member automatically receives 250 votes, plus one additional vote for each share of capital subscription purchased. IBRD Articles, *supra* at art. V(3). As a country's IMF quota changes, the IBRD accordingly adjusts allocations for increased capitalization shares. DEVELOPMENT COMMITTEE, 2 CURRENT DEVELOPMENT ISSUES: REPORTS BY THE PRESIDENT OF THE WORLD BANK TO THE DEVELOPMENT COMMITTEE 58 (1985) [hereinafter cited as DEVELOPMENT COMMITTEE] (available at the World Bank, Washington, D.C.). For example, Japan's IMF quota increased so much that the Bank repeatedly authorized it to purchase additional IBRD shares. *Id.* As a result, by September 1984, Japan became the second

had not yet announced a definite time and place for the general capital increase negotiations.¹⁶

b. Capital Increases in the International Finance Corporation

The International Finance Corporation (IFC) is expected to double its assets over the next five years from \$0.6 billion to \$1.3 billion.¹⁷ Ninety of the 127 IFC members already approved the increase. Six more members must approve the increase before it can be implemented.¹⁸

The IFC must increase its lending capacity in order to meet the increased demand for funds from its member countries. In fiscal year 1985, IFC-approved investments increased by fifty-six percent despite the unfavorable climate for private enterprise in many of the IFC's developing member countries. The investment levels were the highest achieved since the IFC's founding.¹⁹ Presently, IFC investments involve approximately \$709 million in seventy developing countries. The IFC approved seventy-five loans and investments in thirty-eight countries in fiscal year 1985, totalling an additional \$937.2 million.²⁰ In one of these loans, the IFC undertook its first ever assisted investment of private foreign capital in China.²¹

c. Capital Increases in the International Development Association

The International Development Association (IDA) projects its needs for three years in advance, negotiates the required replenishment with the member countries, and then collects the contributions of the member countries.²² The IDA began negotiations in Paris in January 1986

largest IBRD shareholder, surpassing West Germany, France, and Great Britain. Because a decline in voting power is a concern to many IBRD members, they heavily negotiate the use of IMF quotas and the preemptive rights issue prior to finalizing new capitalization increases. Forg t Interview I, *supra* note 3.

16. Brannigan Responses I, *supra* note 3.

17. Washington Post, Sept. 26, 1985, at E3, col. 1.

18. INTERNATIONAL FINANCE CORPORATION, 1985 ANNUAL REPORT 6 (1985).

19. *Id.* at 2, 4.

20. *Id.* at 2.

21. *Id.* at 4. The investment agreement calls for a joint Chinese-French venture to produce small, lightweight trucks in Guangzhou. Ten percent of the equity from this investment will be offered for sale to the Chinese public. *Id.*

22. DEVELOPMENT COMMITTEE, *supra* note 15, at 35. The eighth replenishment period is referred to as IDA 8. *Id.* For IDA 7, although \$16 billion was proposed, only \$9 billion was subscribed from the member countries, largely because the United States decreased its annual contribution to \$750 million from \$1 billion the previous year. *Id.* In light of the United States position, many other countries also declined to increase their contributions. *Id.* As a result, IDA 7 represented a decline of twenty-four percent

for its eighth three-year replenishment. In 1985, the Reagan Administration indicated that it would urge the United States Congress to approve an increase in the United States IDA subscription.²³ Encouraged by this development, Congress voted to contribute \$75 million for a separate aid project—the World Bank Special Facility for Africa—on December 19, 1985. In January 1986, however, the Reagan Administration announced that it would withhold the special contribution until it could determine the effect of the Gramm-Rudman-Hollings Act²⁴ on the United States budget.²⁵ Thus, the United States may not increase its IDA subscription as anticipated.

B. WORLD BANK LENDING PROGRAMS

1. *Current Loan Terms: Modified System of Floating Interest Rates and Favorable Repayment Periods*

The Bank changed from a system of fixed interest rate loans to a modified system of floating interest rates in July 1982.²⁶ Under this new system, the Bank adjusts the interest rates charged on loans quarterly according to guidelines related to the Bank's cost of borrowing.²⁷ In the third quarter of fiscal year 1986, the rate was down to 8.5 percent, well below existing commercial rates.²⁸ In addition to offering interest rates lower than commercial rates, IBRD loans offer repayment periods of fifteen to twenty years and grace periods of up to five years.²⁹ In 1985, the Bank also eliminated its ¼ percent front end handling fee on loans in an effort to entice more loan applications following a drop in the IBRD loan volume.³⁰

in real terms from average annual commitment levels. *Id.*

23. *Id.*

24. Balanced Budget and Emergency Deficit Control Act of 1985 (Gramm-Rudman-Hollings Act), Pub. L. No. 99-177, 99 Stat. 1037 (1986).

25. Washington Post, Mar. 13, 1986, at E1, col. 2.

26. Washington Post, Dec. 14, 1985, at B1, col. 1.

27. Interview with Louis Forg t, Legal Advisor, Policy and General Affairs, World Bank, in Washington, D.C. (Feb. 6, 1986).

28. Washington Post, Jan. 20, 1986, at 37, col. 1.

29. WORLD BANK, THE WORLD BANK AND INTERNATIONAL FINANCE CORPORATION 4, 51 (Apr. 1985). For example, Chile recently was charged 8.8 percent interest with a three year grace period and fifteen year maturity. Washington Post, Dec. 14, 1985, at B1, col. 2.

30. See WORLD BANK ANNUAL REPORT, *supra* note 9, at 12 (stating that this reduction was implemented on the understanding that the fee would be reinstated if the funds derived from the fee become necessary for the Bank's fiscal security); see also Wall St. J., Sept. 30, 1985, at 20, col. 6 (stating same point).

2. *The New World Bank Cofinancing Initiative*

The World Bank's traditional cofinancing involved an arrangement whereby the Bank associated its funds with those funds provided by sources external to the borrowing country.³¹ Such arrangements failed, however, to generate new commercial bank cofinancing funds.³² By the early 1980's, there was a significant decline of private lending to the Third World due in part to the worldwide recession. The Bank did not foresee a resurgence in private lending under either traditional cofinancing agreements or other standard lending methods.³³

Consequently, the World Bank announced a new cofinancing initiative intended to increase flows of private capital to developing countries in January 1983. Under this program, the World Bank acts as a co-lender, directly funding or guaranteeing portions of the commercial loan.³⁴ These loans, known as "B-loans," are contrasted with "A-loans," the direct loans made for approved development projects. The World Bank closely links this co-lending program to its own direct development programs.³⁵

Under the pilot program, the Executive Directors initially authorized the World Bank to commit \$500 million to as many as twenty lending

31. See generally TAYLOR, *supra* note 1 (providing a complete discussion of the World Bank cofinancing program); Note, *The World Bank's New Cofinancing Initiatives: Legal Mechanisms for Promoting Commercial Lending to Developing Countries*, 15 LAW & POL'Y INT'L BUS. 911 (1983) (discussing World Bank's expanded cofinancing program). The participants to a cofinancing program may associate loans informally, or the loans may be more complex, with provisions linking the sources of funding through a Memorandum of Agreement between the World Bank and the commercial lenders. Note, *supra* at 919-20; see also WORLD BANK, COFINANCING 28 (1983) (available at the World Bank, Washington, D.C.) (noting that the World Bank historically entered into cofinancing arrangements with three types of lending organizations: official bilateral development agencies; regional development banks; and multinational commercial banks); TAYLOR, *supra* note 1, at 19 (stating that since mid-1973, commercial banks cofinanced over 60 projects, extending \$3.6 billion in association with World Bank loans).

In the last decade, however, the World Bank's traditional cofinancing program only partially filled the need for funds. TAYLOR, *supra* note 1, at 19.

32. Interview with Anthony G. Toft, Legal Department, World Bank, in Washington, D.C. (Oct. 31, 1985).

33. A.W. Clausen, *Corrective Initiatives in International Trade and Finance*, Statement to the United Nations Conference on Trade and Development 8-9 (June 9, 1985) (available at the World Bank, Washington, D.C.).

34. WORLD BANK, COFINANCING 11 (1983) (available at the World Bank, Washington, D.C.).

35. Under the new cofinancing program the World Bank also extends an A-loan for each development project receiving a B-loan jointly financed by the World Bank and commercial lenders. H. Sasson, *Cofinancing with the World Bank*, 3 THE WORLD OF BANKING 6 (Mar.-Apr. 1984).

operations.³⁶ The World Bank participated in thirteen B-loans in the first 2½ years of the new program. As of January 1986, the World Bank committed \$190.3 million of its own funds to the B-loan program. Combined with \$1,635.7 million from commercial lenders, \$1,825 million has been committed to the B-loan program.³⁷ The target volume for the three-year pilot program is \$2 billion.³⁸

The B-loan program authorizes four types of loan instruments designed to assist and encourage private direct loans from commercial lenders.³⁹ First, the Bank as a co-lender may directly fund the later maturities of a commercial loan.⁴⁰ Second, the Bank may guarantee the later maturities. Under this option the Bank may purchase the later maturities at the request of the commercial lenders.⁴¹ Third, the Bank may undertake a defined commitment to finance deferred principal at fixed payment levels in the event of fluctuating interest rates.⁴² Finally,

36. WORLD BANK ANNUAL REPORT, *supra* note 9, at 55-56. Half of the targeted range of fifteen to twenty operations, with a volume of \$1,051 million leveraged by \$130 million of World Bank funds, was reached in the first two years of the program. *Id.*

37. World Bank, Record of World Bank B-loans by Fiscal Year of Signing (Jan. 1986) (available at the World Bank, Washington, D.C.).

38. *Id.* The target volume for the program apparently will not be reached in the three year period. *Id.* The World Bank expressed satisfaction with the results of the program thus far, noting:

The borrowers of the eleven B-loans signed thus far include one East European, one East Asian, and three Latin American countries, all with varied market standings. The sectoral distribution of B-loans encompasses agriculture, energy and power, industry and telecommunications. The more than 160 participating commercial banks have included a wide representation of major and smaller regional banks from Europe, Japan, the Middle East, and North America.

WORLD BANK ANNUAL REPORT, *supra* note 9, at 55.

39. WORLD BANK ANNUAL REPORT, *supra* note 9, at 55; TAYLOR, *supra* note 1, at 39.

40. TAYLOR, *supra* note 1, at 40-42. The funding of late maturities is intended to encourage private lenders to extend their maturities beyond what they would normally offer, with the World Bank funding an additional year or more. *Id.* B-loans made under this option for projects in Hungary and Colombia featured World Bank funding of maturities for two years beyond the period funded by commercial lenders. World Bank, Record of World Bank B-loans by Fiscal Year of Signing (Jan. 1986) (available at the World Bank, Washington, D.C.).

41. See TAYLOR, *supra* note 1, at 44 (noting that under this option, private lenders wholly fund the maturities of the loan and the World Bank guarantees late maturities, with the possibility to be released from all or part of its share); WORLD BANK, WORLD BANK COFINANCING WITH COMMERCIAL BANKS: NOTE ON THE NEW INSTRUMENTS 10 (Sept. 30, 1983) (available at the World Bank, Washington, D.C.) (observing that if the Bank is obligated to fund the late maturities, it is subrogated to the rights of the commercial lender to seek reimbursement from the borrower).

42. TAYLOR, *supra* note 1, at 45. Installment payments combining interest and principal are fixed at a certain level. *Id.* If interest rates rise above the fixed level of the installments, leaving an unpaid amount at the end of the scheduled period of payments, the World Bank is obligated to finance the final repayment if the lender is not willing

the World Bank may sell participation rights in loans it negotiates to commercial lenders under the arrangement.⁴³

All parties to a B-loan benefit from the transaction. The commercial co-lenders benefit from the World Bank's informational and structural umbrella, particularly the World Bank's expertise in identifying high-priority, well-conceived projects.⁴⁴ The Bank's involvement in the transaction creates the perception that these are "quality loans."⁴⁵ Moreover, the lenders benefit from the "special relationship" between the World Bank and the borrowing country, namely, the flexibility and ability of the World Bank to work with borrowers in the event that they cannot repay loans.⁴⁶ The new cofinancing program, therefore, creates an incentive for private lenders to fill a "financing gap."⁴⁷ Development projects still must meet World Bank standards,⁴⁸ but because the World Bank itself cannot provide sufficient funds to carry out the projects, the program encourages private lenders to lend funds to developing countries.⁴⁹

The new cofinancing program provides two primary benefits to borrowing countries. First, the program increases their familiarity with, and access to, commercial markets.⁵⁰ Second, B-loans provide better terms to borrowers; the World Bank calls this significant "additionality" over terms a borrower would otherwise receive. "Additionality" includes lengthened maturity and grace periods, lower spreads and fees, the availability of increased amounts of available funds, and a renewed willingness on the part of commercial banks to lend to developing coun-

to do so. *Id.* at 44; World Bank, Record of World Bank B-loans by Fiscal Year of Signing (Jan. 1986) (available at the World Bank, Washington, D.C.).

43. See TAYLOR, *supra* note 1, at 46 (noting that the sale of participations method of cofinancing has not been used to date under the B-loan program).

44. See WORLD BANK, COFINANCING 2 (1983) (available at the World Bank, Washington, D.C.) (stating that commercial lenders believe that loans extended to a well-conceived World Bank development project will have a greater chance of being repaid).

45. Interview with Anthony G. Toft, Legal Department, World Bank, in Washington, D.C. (Oct. 31, 1985).

46. TAYLOR, *supra* note 1, at 52. Although the Bank will make arrangements to avoid default by the borrowing entity, it is the World Bank's policy not to take part in debt rescheduling arrangements. *Id.*

47. Interview with Anthony G. Toft, Legal Department, World Bank, in Washington, D.C. (Oct. 31, 1985).

48. See Note, *supra* note 31, at 929 (noting "Bank-approved development projects").

49. TAYLOR, *supra* note 1, at 39-40.

50. See *id.* at 39-40 (discussing how the B-loan program generally helps developing countries overcome "market constraints" and the resulting restrictions on international lending).

tries.⁵¹ As a result, the terms of a B-loan are more suited to both increased development project financing and the borrower's ability to repay the loan.⁵²

World Bank officials and most observers view the second funding instrument—the guarantee of later maturities of a loan—as having the greatest potential to increase private lending.⁵³ This is particularly true given the World Bank's limited resources for making direct loans. Thus far, however, the guarantee option has been used only in Paraguay and Chile.⁵⁴

The recent loan to the Republic of Chile, signed on November 1, 1985, evidences a new development in the B-loan program.⁵⁵ The B-loan provides what might be considered as balance of payments assistance to Chile. Under this arrangement, the World Bank guaranteed fifty percent of a \$300 million loan for a road investment and maintenance project, that in turn, financed part of a New Money Facility with the Central Bank of Chile.⁵⁶ This type of broader financial assistance provides a model for Brazil, Mexico and other developing countries where fluctuating interest rates and commodity price levels frequently impede long-term development.

a. Structuring the B-loan

Either the borrowing country or the commercial lender may approach the World Bank to arrange a B-loan.⁵⁷ The commercial lender performs the managerial and agency functions typical of syndicated credit lending⁵⁸ and drafts the documents formalizing the loan. The Bank then reviews both the terms of the loan and the loan documents

51. See H. Sasson, *Cofinancing with the World Bank*, 3 THE WORLD OF BANKING 7 (Mar.-Apr. 1984).

52. See TAYLOR, *supra* note 1, at 20 (noting that the World Bank works with potential borrowers in identifying projects and, as with traditional cofinancing, helps publicize those lending opportunities to commercial banks and other lenders).

53. Interview with Anthony G. Toft, Legal Department, World Bank, in Washington, D.C. (Oct. 31, 1985).

54. World Bank, Record of World Bank B-loans by Fiscal Year of Signing (Jan. 1986) (available at the World Bank, Washington, D.C.).

55. N.Y. Times, Nov. 2, 1985, at 46, col. 4.

56. World Bank, Chile: Road Sector Project: Cofinanced US\$300 Million Syndicated Loan Facility With a Partial World Bank Guarantee: Summary of Terms and Conditions 1 (Nov. 1, 1985) (available at the World Bank, Washington, D.C.) (noting that the total amount committed under the New Money Facility is \$785 million, and is intended to finance part of the "foreign and local currency expenditures" for the first three years of the road sector program).

57. WORLD BANK, COFINANCING 16 (1983) (available at the World Bank, Washington, D.C.).

58. TAYLOR, *supra* note 1, at 48.

to ensure their consistency with World Bank policies.⁵⁹ Loan documents incorporate clauses regarding procurement of goods and services, procedures for disbursement and drawdown, repayment terms and other aspects of the loan. "Tombstone" advertisements, similar to those used in security offerings in the United States, are published by the lead bank to notify the international financial community of the loan and to solicit broader participation.⁶⁰ Cross-default clauses in the loan instruments are a source of comfort to commercial banks in cofinancing arrangements because they give both the World Bank and the private lender the right to take action if a borrower defaults on its loan obligations to either lender.⁶¹ Many commercial lenders, however, criticize the World Bank's narrow interpretation of the cross-default clauses and its refusal to accept mandatory cross-default clauses.⁶² As with a traditional cofinancing arrangement, the cofinanced loan may be declared in default if the World Bank accelerates its parallel A-loans for the project or "if there is material debt service failure to the World Bank by the borrower or guarantor, if any."⁶³ Thus, there are limits on the World Bank's recognition of cross-default clauses. Officials emphasize that the World Bank's participation in the B-loan program is not intended to fully guarantee the commercial banks from any losses.⁶⁴ The advantages to commercial banks of closer association with the World Bank under the B-loan program, however, create sufficient incentives for mutually advantageous lending.⁶⁵

59. *Id.*

60. World Bank, Chile: Road Sector Project: Cofinanced U.S. \$300 Million Syndicated Loan Facility With a Partial World Bank Guarantee: Summary of Terms and Conditions (Nov. 1, 1985) (available at the World Bank, Washington, D.C.).

61. Note, *supra* note 31, at 920. For example, the November, 1985 loan to Chile limited cross-default to World Bank loans to the following contingencies: payment defaults in excess of \$5 million that continues for at least 45 consecutive days, or acceleration by the World Bank under the relevant loan. Moreover, any event that results in suspension or acceleration of the B-loan gives the World Bank the option to suspend disbursements or accelerate maturities under the A-loan. See World Bank, Chile: Road Sector Project: Cofinanced U.S. \$300 Million Syndicated Loan Facility With a Partial World Bank Guarantee: Summary of Terms and Conditions (Nov. 1, 1985) (available at the World Bank, Washington, D.C.).

62. See Note, *supra* note 31, at 924-25 (noting that although the Bank refuses to accept mandatory cross-default clauses, it retains the option of accelerating A-loans in response to default under the B-loan); see also WORLD BANK, COFINANCING 16 (1983) (available at the World Bank, Washington, D.C.) (stating the Bank refuses to accept mandatory cross-default clauses).

63. TAYLOR, *supra* note 1, at 59.

64. Interview with Anthony G. Toft, Legal Department, World Bank, in Washington, D.C. (Oct. 31, 1985).

65. TAYLOR, *supra* note 1, at 39.

b. Potential Liabilities to the World Bank Under the New Cofinancing Program

Three types of legal liability may emerge from the World Bank's pilot cofinancing program. The first potentially troublesome aspect of the new arrangement concerns the World Bank requirement under the Articles of Agreement that a member government territory guarantee a World Bank loan.⁶⁶ Whether a similar guarantee is extended to the commercial bank portion of the loan is a separate matter negotiated between the borrower and the commercial lender. If the World Bank portion of the loan is guaranteed, and the commercial lender's portion is not, problems may arise. For example, debt service payments normally are shared on a pro-rata basis in syndicate credit operations.⁶⁷ If the World Bank were to share payments received on the basis of its guarantee with the commercial lender, the World Bank would be deprived of the full amount of the guarantee by the member government. A voluntary sharing of guarantee payments with co-lenders would require the World Bank to reduce its assets in violation of the Articles of Agreement. Further, if the Bank were to share guarantee payments with commercial lenders, this would result in "an indirect partial guarantee of the commercial bank portion, in circumstances where the member country intended that no guarantee be given directly to the commercial lenders."⁶⁸ World Bank practice to date has been to refuse to share payments from guaranteeing members with commercial lenders.⁶⁹ Commercial bankers may attempt to recover their portion of payments through set-off or other means.⁷⁰

A second source of potential liability is the possibility of a suit based

66. *Id.* at 57. For example, the Hungarian People's Republic, a member of the World Bank, guaranteed a loan signed in June 1985 to the National Bank of Hungary for agricultural, chemical and transport projects. *Id.* See also World Bank, Hungary: Integrated Livestock Industry Project, Fine Chemicals and Transport (Road/Rail) Project: Cofinanced \$300 Million Syndicated Loan: Summary of Terms and Conditions 3 (June 19, 1985) (available from the World Bank, Washington, D.C.) (observing that the guarantee only extended to the World Bank participation).

67. TAYLOR, *supra* note 1, at 55.

68. *Id.* at 57.

69. *Id.* Although the Bank will not extend any guarantees, it generally works closely with the commercial lender, sharing information regarding any developments that may interfere with repayment of the loan. *Id.* at 57-58.

70. Interview with Anthony G. Toft, Legal Department, World Bank, in Washington, D.C. (Oct. 31, 1985); TAYLOR, *supra* note 1, at 57. This aspect of the loan may also be expressed more formally in a "mutual non-sharing clause," where the lenders agree that commercial lenders may retain any amounts received from the borrower—through set-off of the borrower's other assets—until the amount recovered by the commercial bank equals that received by the World Bank under the latter's guarantee. *Id.*

on the World Bank's participation in loan arrangements and guarantees. As an international organization, the World Bank is not immune from suit arising from its actions in loan arrangements. Therefore, it eschews the role of manager or lead agent for the lending syndicate, thus reducing its potential liabilities in the project.⁷¹ The syndication agreement for the B-loan includes language similar to that used in normal commercial agreements. It states that each co-lender has made his own investigation of the project and invests "with his eyes open."⁷² The World Bank, in short, rejects any express or implied warranties associated with the project.⁷³

The third potential area of liability is the requirement in the IBRD Articles of Agreement that the World Bank has an express duty to use "the resources and facilities of the Bank . . . exclusively for the benefit of members."⁷⁴ The Articles require that the terms of World Bank loans be "reasonable" and "appropriate."⁷⁵ Cofinancing arrangements intended to provide incentives to commercial banks, and which are extended at commercial rates, although on highly favorable terms, might not satisfy these requirements. The Articles of Agreement, however, are worded broadly on this point so it is not a likely source of liability.⁷⁶

c. Prospects for the New Cofinancing Program

The new cofinancing program is accomplishing its goal of stimulating increased levels of private commercial investment in developing countries at terms favorable to borrowers.⁷⁷ Member countries of the World Bank, as well as World Bank officials, are voicing their support for this new initiative.⁷⁸ Moreover, the Reagan Administration is providing strong support for the World Bank's B-loan program. In particular, United States Secretary of the Treasury, James A. Baker, called for an additional \$20 billion in new lending to developing nations from com-

71. Note, *supra* note 31, at 950.

72. Interview with Anthony G. Toft, Legal Department, World Bank, in Washington, D.C. (Oct. 31, 1985).

73. Note, *supra* note 31, at 949.

74. IBRD Articles, *supra* note 15, at art. III, § 1(a).

75. *Id.* at art. I(2).

76. See Note, *supra* note 31, at 949 (stating that to date, this question has not been publicly raised).

77. WORLD BANK ANNUAL REPORT, *supra* note 9, at 55.

78. See International Bank for Reconstruction and Development, International Finance Corporation and International Development Association, 1984 Annual Meetings of the Boards of Governors: Summary Proceedings, Washington, D.C. (Sept. 24-27, 1984).

mercial banks at the October 1985 meeting of the Governors of the World Bank and International Monetary Fund in Seoul, South Korea.⁷⁹ In turn, United States banks' reaction to the B-loan program is positive, because of their already heavy financial commitments in developing countries and their desire to obtain more secure investments.⁸⁰ The new B-loan program plays a vital role in promoting such investment, considering the need for increased funding and the limits on the World Bank's own resources.

3. *Structural Adjustment Loans and the Increase in Non-Project Development Loans*

The World Bank generally interprets its Articles of Agreement to limit Bank lending to specific types of development projects.⁸¹ Historically, however, the Bank made exceptions for four special types of "non-project" loans.⁸² The scope of this "non-project" lending has expanded greatly in recent years with the introduction of structural adjustment loans (SALs).⁸³ SALs now account for fifteen to twenty percent of all Bank lending.⁸⁴

Structural adjustment loans focus on macroeconomic issues and are designed to encourage changes in the national policy and institutional structures of a borrowing country. These changes attempt to maximize the efficient use of economic resources and to achieve sustained economic growth.⁸⁵ Essentially, SALs have four specific goals: (1) eliminating or reducing state enterprises; (2) opening protected industries; (3) easing restrictions on private foreign capital investments;⁸⁶ and (4) stopping the flight of domestic capital from the borrowing country.⁸⁷ In addition to providing the necessary funds through SAL's to achieve a

79. Washington Post, Oct. 9, 1985, at F1, col. 1

80. *Id.*

81. WORLD BANK, THE WORLD BANK AND INTERNATIONAL FINANCE CORPORATION 32 (Apr. 1985).

82. *Id.* These four exceptions are: 1) the reconstruction or rehabilitation of an economy after a calamity like war, earthquake or flood where the quick transfer of external resources is needed to restore normal development activities; 2) the import of supplies and equipment so that existing domestic production capacity can be fully used; 3) accommodations for a sudden fall in export earnings in an economy that is critically dependent on a single item of export; and 4) compensation for a sharp deterioration in the balance of trade because of a rapid rise in import prices. *Id.*

83. See WORLD BANK ANNUAL REPORT, *supra* note 9, at 52 (noting that from 1980 to 1985 the Bank approved thirty-one operations in support of structural adjustment programs in seventeen countries for a total commitment of \$4.5 billion).

84. Washington Post, Sept. 20, 1985, at E2, col. 3.

85. WORLD BANK ANNUAL REPORT, *supra* note 9, at 3.

86. Washington Post, Oct. 7, 1985, at A12, col. 1.

87. Washington Post, Oct. 8, 1985, at A2, col. 4.

more sound macroeconomic policy, the Bank's legal department studies, proposes, and helps draft national legislation designed to achieve these goals.⁸⁸

The World Bank initiated a particularly large SAL project, entitled the Special Facility for Sub-Saharan Africa, in February 1985. With the aid of fourteen donor countries, the Bank will provide \$1.2 billion over three years to assist approximately twenty-one African countries that are undertaking difficult economic policy reforms.⁸⁹

Structural adjustment loans will be a successful vehicle for improving economic performance according to preliminary indications. In his 1985 Annual Address to the Bank's Boards of Governors, Bank President A.W. Clausen listed nine specific structural adjustments that appear to be successful in the countries adopting them.⁹⁰ These adjustments include reduced consumer subsidies, installation of market interest rates, raised produce prices, devaluation of exchange rates, increased domestic savings, reduced economic distortions, and greater freedom of action for private and public economic agents. Continued improvements in each of these areas will contribute to making developing countries financially sound and more attractive to commercial lenders, allowing for graduation from World Bank assistance.

4. *Graduation from Eligibility for World Bank Loans*

Only countries that cannot obtain a loan on reasonable terms in the private capital market may borrow from the World Bank.⁹¹ Through a process called graduation, the World Bank phases out those borrowers who achieve a level of development and management capability that permits them access to other capital markets. Once a Bank member is able to borrow in the world's markets, it is ineligible for further World Bank development loans.⁹²

88. See WORLD BANK ANNUAL REPORT, *supra* note 9, at 52-53 (observing that the World Bank refers to such assistance and loan supervision as "policy dialogue"); DEVELOPMENT COMMITTEE, *supra* note 15, at 63 (noting that borrowing countries, however, call it "conditional lending," i.e., lending "conditioned" on economic, institutional and/or sectoral reforms in the borrowing country).

89. WORLD BANK ANNUAL REPORT, *supra* note 9, at 25.

90. Address by A.W. Clausen, President of the World Bank, to the Boards of Governors, in Seoul, Korea at 11 (Oct. 8, 1985) (available at the World Bank, Washington, D.C.).

91. IBRD Articles, *supra* note 15, at art. III(4)(ii).

92. The following countries are graduate members: France, Luxembourg, the Netherlands, Belgium, Australia, Austria, Denmark, Norway, Italy, Israel, Singapore, Ireland, Spain, Greece, and Japan. WORLD BANK, THE WORLD BANK AND INTERNATIONAL FINANCE CORPORATION 8 (Apr. 1985). Japan, who borrowed from the IBRD for 14 years, is now one of the Bank Group's largest sources of borrowing. *Id.*

In 1985, the Bank's executive directors adopted a new Statement on Graduation.⁹³ Resolving a policy debate between the Bank and several high income countries,⁹⁴ the statement establishes a clear yet flexible set of guidelines for determining when a member nation is ineligible for World Bank loans. In order to reach a consensus, the executive directors designed the guidelines to accommodate the circumstances of an individual country.⁹⁵

The Bank set a per capita GNP of \$2,650 as the graduation benchmark.⁹⁶ Graduation will normally occur within five years after a country reaches that level so long as its GNP does not fall below the benchmark level. Graduated members may still request technical assistance, send students to the Bank's training institutes, and borrow from the IFC.⁹⁷

In the past two years, the Bank successfully raised capital and encouraged commercial lenders to participate in Bank loans through the new cofinancing initiative. It also successfully instituted macroeconomic policies through the use of structural adjustment loans. In many respects, the Bank achieves its goals and facilitates development through financing increasingly diverse projects. These projects, however, are not always without controversy.

II. CRITICISMS OF WORLD BANK DEVELOPEMNT PROJECTS

In the past two years, several World Bank development projects faced a broad range of criticisms. Projects attracting the most criticisms include: World Bank funding of migration and resettlement schemes in Indonesia and Bangladesh, a development project in Brazil,⁹⁸ and the CGIAR world seed storage system.⁹⁹

93. WORLD BANK ANNUAL REPORT, *supra* note 9, at 12.

94. *Id.*

95. World Bank, Graduation (Mar. 23, 1982)(available at the World Bank, Washington, D.C.); Letter from Bill Brannigan, World Bank Information and Public Affairs Office (Jan. 28, 1986)(available at the editorial offices of the American University Journal of International Law and Policy, Washington, D.C.).

96. *Id.*

97. WORLD BANK, THE WORLD BANK AND INTERNATIONAL FINANCE CORPORATION 8 (Apr. 1985).

98. See Washington Post, Oct. 6, 1985, at D7, col. 1; Wall St. J., Sept. 30, 1985, p. 25, col. 2. (noting that the Chairman of the United States Senate Committee who determines United States contributions to multilateral development agencies spoke out against the Bank's Brazilian Polonoreste project, a plan to carve out 900 miles of highway in the Amazon Rain Forest and create farmlands). The original Bank loan agreement with Brazil noted that the rights of the indigenous Indians were to be respected. Nevertheless, much violence between the resettled farmers and the Indians was re-

Regarding the migration situation in Indonesian-West Papua,¹⁰⁰ spokespersons claiming to represent the West Papuans asserted that the chief objective of the Indonesian government in occupying West Papua, a territory rich in minerals, petroleum, gas, and agricultural lands, was to use West Papuan land to resettle impoverished Javans.¹⁰¹ These spokespersons reported to a United Nations Committee that, to accomplish their goal, Indonesia seized the land of native Papuans, settled the West Papuans elsewhere, and then brought in migrants from Java.¹⁰² Though undertaken in the name of development, this forced migration left West Papuans considerably worse off than they were under Dutch colonial rule. As a result, over 16,000 West Papuans fled to New Guinea.¹⁰³

ported and charges were made that the soil was unacceptable for farming and the destruction of vast acres of rain forest was an environmental debacle. *Id.* The Bank interrupted disbursements to the Polonoreste project in the midst of these protestations but not in direct response to the environmental and human rights protests. *Id.* The Bank resumed the disbursements after Brazil adopted a plan of action regarding future administration of the project that met the Bank's satisfaction. Brannigan Responses I, *supra* note 3.

99. Washington Post, Nov. 4, 1985, at A3, col. 1. The World Bank is a major sponsor for the present international germplasm program conducted by the Consultative Group on International Agricultural Research (CGIAR) organized in May 1971. *Id.* Third World countries have charged that the industrialized countries have exploited their donations of seed samples through agricultural hybridization and plant germ plasm biotechnological developments now generating commercial revenues not shared with less developed country donors. *Id.* To date, the Bank has not taken a position on the accusations. Brannigan Responses I, *supra* note 3.

100. Anti-Slavery Society for the Protection of Human Rights, *Report for 1984 to the United Nations Working Group on Indigenous Populations "West Papua"* (available from the Anti-Slavery Society, 180 Brixton Road, London, SW9, U.K.) [hereinafter cited as *Anti-Slavery Society, Report for 1984*]. When the Netherlands withdrew from their colonies in the region, the fate of West Papua became a matter of negotiation among the Dutch, Indonesian, and United States governments. *Id.* No West Papuans participated in the discussion to determine the future of their homeland. *Id.* In 1962, the parties reached the New York Agreement, making Indonesia the administrator of the territory subject to a plebiscite being carried out on the basis of one man one vote as recommended by Article XXIII of the United Nations Charter. *Id.* Only 1,025 specially selected Papuans held voting rights. *Id.*

101. Statement on Behalf of the Free Papua Movement (West Papuan Peoples' Movement for Freedom and Independence), 37 U.N. ESCOR (Third Session, Working Group on Indigenous Populations at Geneva, August 1, 1984). See generally Commission on Human Rights, Economic and Social Council, *Problem of Discrimination Against Indigenous Population: Report of the Working Group on Indigenous Populations on its Third Session*, U.N. Doc. E/CN.4/Sub.2/1984/20 (Aug. 8, 1984) (describing generally the Free Papua Movement).

102. *Id.*

103. Statement on Behalf of the Anti-Slavery Society, West Papuan Refugees, 37 U.N. ESCOR (Geneva, 1984); Commission on Human Rights, Economic and Social Council, *Problem of Discrimination Against Indigenous Population: Report of the Working Group on Indigenous Populations on its Third Session*, U.N. Doc. E/CN.4/Sub.2/1984/20 (Aug. 8, 1984).

In 1985, the Anti-Slavery Society for the Protection of Human Rights leveled similar criticisms of Bank development projects in the Chittagong Hill Tracts of Bangladesh.¹⁰⁴ The Bangladesh government is resettling large numbers of people on the lands of indigenous populations. Such resettlement often causes the indigenous population to flee, virtually destroying their culture. The Anti-Slavery Society estimates that in 1981, there were at least fourteen refugee camps in India made up of displaced Chittagong Hill Tract tribes.¹⁰⁵

The Bank handles complaints about projects through a number of channels. In general, the Bank assigns several different units to investigate charges. These units include the regional division responsible for the project, the Public Affairs Unit and possibly the Operations Evaluation Department (OED).¹⁰⁶ World Bank President, A.W. Clausen, stated that when evaluating a development project, the Bank should take into account non-financial considerations as well as purely economic quantitative analysis.¹⁰⁷ Moreover, the Bank's Operations Evaluation staff is working presently to increase borrower participation in its formal, after completion project evaluation process.¹⁰⁸

If the new Bank President shares Mr. Clausen's philosophy, observers should expect to see more constructive criticism of Bank projects from within the World Bank group itself. Overall, however, the Bank enjoys a sterling reputation and continues to receive new applications for membership.

104. Anti-Slavery Society for the Protection of Human Rights, *Report for 1985 to the United Nations Working Group on Indigenous Populations: The Situation of Refugees from the Chittagong Hill Tracts of Bangladesh and from West Papua* 1 (available from the Society, 180 Brixton Road, London, SW9, U.K.).

105. *Id.* at 98.

106. Brannigan Responses I, *supra* note 3.

107. Clausen, CORRECTIVE INITIATIVES IN INTERNATIONAL TRADE AND FINANCE (statement to the United Nations Conference on Trade and Development 8-9) (June 9, 1985) (available at the World Bank, Washington, D.C.). In 1980, the Bank advanced an International Declaration on the Environment through which eleven major development assistance agencies agreed to harmonize their policies and practices with careful regard for the environment. WORLD BANK ANNUAL REPORT, *supra* note 9, at 72-74. In a related development, the Bank has issued new and stronger guidelines governing chemical pesticides. *Id.* The Bank also distributes charts depicting the "Do's and Don'ts" of pesticide use. *Id.* These charts are capable of comprehension by the illiterate. *Id.* Furthermore, the Bank offers a short course on protecting the general public and the environment. *Id.* In an effort to prevent disasters such as the toxic gas release in Bhopal and the natural gas explosion near Mexico City, the Bank issued guidelines in 1984 requiring borrowers to demonstrate that such hazards have been recognized and measures will be taken for their prevention. *Id.* at 73.

108. WORLD BANK ANNUAL REPORT, *supra* note 9, at 62.

III. CHANGES IN WORLD BANK MEMBERSHIP, ADMINISTRATION AND LEGAL MATTERS

A. FOUR COUNTRIES BECOME BANK'S NEWEST MEMBERS

In the past two years, the Bank accepted St. Christopher and Nevis, Mozambique, Hungary, and Tonga as new members.¹⁰⁹ Membership in the IMF is a prerequisite to World Bank membership.¹¹⁰ Each new member must subscribe to the Bank's capitalization based on its IMF quota.¹¹¹ Part of each member's obligation is due immediately and the remaining subscription is "on call" and must be made available should the Bank need it.¹¹² Currently, approximately ten percent of the subscription is due upon acceptance to the World Bank.¹¹³

Each new member is entitled to appoint one Governor and one alternate to serve on the Bank's Board of Governors.¹¹⁴ Mozambique, Hungary and Tonga have also joined the the IDA and the IFC. St. Christopher and Nevis is awaiting action on its membership application to the IDA.¹¹⁵

B. THE WORLD BANK PRESIDENCY IN TRANSITION

The President of the World Bank Group also serves as the Chief Executive Officer of the IBRD and the IDA.¹¹⁶ Although the Bank's Articles of Agreement states that the Bank's Executive Directors select the World Bank President, through tradition and understanding, the United States Government always selects the President.¹¹⁷ The Presi-

109. See Letter from Bill Brannigan, World Bank Information and Public Affairs Office to Jane D. Weaver (Jan. 28, 1986) (available at the editorial offices of the American University Journal of International Law and Policy, Washington, D.C.) (observing that applications from Poland and Kiribati are pending, awaiting IMF action).

110. IBRD Articles, *supra* note 15, at art. II(1).

111. Brannigan Responses I, *supra* note 3; DEVELOPMENT COMMITTEE, *supra* note 15, at 58.

112. IBRD Articles, *supra* note 13, at art. II(3).

113. Letter from Bill Brannigan, World Bank Information and Public Affairs Office to Jane D. Weaver (Jan. 28, 1986) (available at the editorial offices of the American University Journal of International Law and Policy, Washington, D.C.).

114. IBRD Articles, *supra* note 15, at art. V(2). The Bank's Board of Governors has the powers of decision on membership, distribution of net income and changes in capital stock. *Id.* at art. V(2)(b).

115. See Letter from Bill Brannigan, World Bank Information and Public Affairs Office to Jane D. Weaver (Jan. 28, 1986) (stating that Portugal also has an IDA application pending).

116. IBRD Articles, *supra* note 15, at art. V(5); *See also* Articles of Agreement of the International Development Association, *opened for signature* Sept. 24, 1960, art. VI(5), 11 U.S.T. 22, T.I.A.S. 46.

117. Washington Post, Sept. 25, 1985 at A3, col. 5; Brannigan Responses I, *supra* note 3.

dent's term of office is five years. The current president, A.W. Clausen, announced that he will retire at the end of his term in June 1986.¹¹⁸ President Reagan appointed former Congressman Barber B. Conable to be Mr. Clausen's successor.¹¹⁹ The following final section discusses recent caselaw involving the World Bank and the Bank's creation of an Administrative Tribunal.

C. LEGAL DEPARTMENT AFFAIRS: THE MENDARO CASE AND THE NEW WORLD BANK ADMINISTRATIVE TRIBUNAL

Recently, the issue concerning the World Bank's jurisdictional immunity status was litigated another time. Susan Mendaro, a World Bank employee, claimed she was discriminated against when her supervisors refused to provide her with the same number of assignments as her male co-workers, thwarted her efforts to complete assignments, permitted unwarranted verbal and physical advances to her, and refused to promote her appropriately.¹²⁰ In 1979, the United States Equal Employment Opportunity Commission dismissed her initial complaint on the grounds that the World Bank is an international agency and thus not subject to the laws of the United States.¹²¹ Mendaro subsequently directed her grievance to a United States federal court and brought suit alleging sex discrimination.¹²²

Mendaro asserted that the World Bank's Articles of Agreement¹²³ waived any immunity bestowed on it¹²⁴ under the International Organizations Immunities Act.¹²⁵ Mendaro relied on the reasoning in *Lutcher S.A. Celulose e Papel v. Inter-American Development Bank*

118. Address by A.W. Clausen, President of the World Bank, to the Boards of Governors, in Seoul, Korea (Oct. 8, 1985).

119. Washington Post, Mar. 14, 1986, at A1, col. 1.

120. Mendaro v. World Bank, 717 F.2d 610, 612 (D.C. Cir. 1983).

121. *Id.*

122. *Id.*

123. IBRD Articles, *supra* note 15, at art. VII, § 3. Article VII, section 3 of the IBRD Articles of Agreement permits actions to be brought against the Bank:

in a court of competent jurisdiction in the territories of a member in which the Bank has an office, has appointed an agent for the purpose of accepting service or notice of process, or has issued or guaranteed securities. No actions shall, however, be brought by members or persons acting for or deriving claims from members. The property and assets of the Bank shall, wheresoever located and by whomsoever held, be immune from all forms of seizure, attachment, or execution before the delivery of final judgement against the Bank.

Id.

124. Mendaro v. World Bank, 717 F.2d 610 (D.C. Cir. 1983); *see also* Exec. Order No. 9,751, 3 C.F.R. 558 (1943-48 Comp.) and Exec. Order No. 11,966, 42 Fed. Reg. 4331 (1977)(discussing the IDA).

125. International Organizations Immunities Act, 22 U.S.C. §§ 288-288e (1982 and Supp. I 1983).

(*Lutcher*).¹²⁶ In *Lutcher*, the Circuit Court for the District of Columbia construed an identical waiver provision in the Inter-American Development Bank's Articles of Agreement as a waiver of immunity to suits brought by bondholders, creditors and beneficiaries of creditors.

While acknowledging that the Bank's charter contained a facially broad waiver of immunity, the court in *Mendaro* held that the World Bank did not waive its immunity from suits brought by employees. In affirming its *Lutcher* analysis, the court distinguished employment relations from external commercial activities, citing additional cases that denied jurisdiction over employment claims of international civil servants.¹²⁷

The World Bank also has been named as a defendant in lawsuits in six countries: Bangladesh, India, United Kingdom, France and Belgium,¹²⁸ as well as several times in the United States. In each case, the courts held the Bank immune or not subject to the court's jurisdiction.¹²⁹

While the court in *Mendaro* noted the conditional nature of the immunity conferred by the International Organizations Immunities Act,¹³⁰ the opinion was criticized as indicating courts' unwillingness to search for remedies for denial of equal protection to employees working within the United States.¹³¹

In 1980, the World Bank established an Administrative Tribunal consisting of seven judges appointed by the Bank's Executive Directors.¹³² The primary factor prompting this tribunal was the need for a larger, more formalized grievance procedure in light of the tremendous

126. *Lutcher S.A. Celulose e Papel v. Inter-American Development Bank*, 382 F.2d 454 (D.C. Cir. 1967).

127. *Mendaro v. World Bank*, 717 F.2d 610, 614-16, 620 (D.C. Cir. 1983); see also *Tuck v. Pan Am. Health Org.*, 668 F.2d 547, 550 (D.C. Cir. 1981) (holding that where employment claims did not arise from commercial activity of international organization, organization is immune if either restrictive immunity or absolute immunity applies); *Broadbent v. OAS*, 628 F.2d 27, 35-36 (D.C. Cir. 1980) (holding that OAS is immune from suit brought by employee alleging breach of employment contracts, where internal administration of OAS is non-commercial and elaborate grievance procedure was in place); *Weidner v. INTELSAT*, 392 A.2d 508, 510 (D.C. App. 1978) (holding that INTELSAT is immune from suit, as an international organization meeting criteria set forth in International Organizations Immunities Act, 22 U.S.C. § 288 (Supp. IV, 1974); *Herbert Harvey, Inc. v. NLRB*, 424 F.2d 770, 773 (D.C. Cir. 1969) (holding that World Bank is not subject to National Labor Relations Act).

128. Brannigan Responses I, *supra* note 3.

129. *Id.*

130. *Mendaro v. World Bank*, 717 F.2d 610, 613-14 (D.C. Cir. 1983).

131. Comment, *How Much Immunity for International Organizations? Mendaro v. World Bank*, 10 N.C.J. INT'L L. & COM. REG. 487, 494 (1985).

132. Article IV(2), The World Bank Administrative Tribunal, Statutes and Rules 2 (Oct. 1982).

expansion of the World Bank staff.¹³³ Some legal analysts speculate that a second motivation for the formation of the World Bank Administrative Tribunal was to guard against nations asserting jurisdiction over the Bank's internal operations.¹³⁴

CONCLUSION

The World Bank embarked in recent years on new initiatives in financing development projects. Its pilot "B-loan" program encourages direct loans by commercial banks and other funding institutions to projects in which the World Bank participates as a co-lender or guarantor. Moreover, structural adjustment loans, graduation programs and similar policies help achieve long-term economic health for member countries. Such initiatives may result in a new and greater role for the World Bank in the international economic system.

The World Bank is experiencing controversy in its external and internal affairs. Allegations of human rights violations associated with World Bank projects in Indonesia and Bangladesh are being investigated through official channels. Employee suits brought against the World Bank are resulting in findings by courts that the World Bank is immune from suit as an international organization. The recent establishment of an Administrative Tribunal, and the beginning of the term of office for a new President in June, 1986, may affect these and other issues.

Jane D. Weaver
Ann Wilcox-Staats

133. See THE WORLD BANK, THE WORLD BANK AND INTERNATIONAL FINANCE CORPORATION 65 (Apr. 1985) (listing World Bank as currently employing approximately 5,800 employees with resident missions in more than 30 countries).

134. See Meron and Elder, *New Administrative Tribunal of the World Bank*, 14 N.Y.U. J. INT'L L. & POL. 1, 2 (1981) (noting Bank's insistence on immunity from jurisdiction of national courts in employment-related cases); E.J. de Arechaga, *The World Bank Administrative Tribunal*, 14 N.Y.U. J. INT'L L. & POL. 895, 897 (1982) (speculating that Bank's administrative tribunal initiative was in response to uncertainty of Bank's immunity from suit in national tribunals); C. Amerasinght, *World Bank Administrative Tribunal*, 31 INT'L & COMP. L.Q. 748, 748-52 (1982) (recognizing need for judicial machinery in Bank structure to settle disputes in staff matters).