

# The World Bank in the Battles of the ‘Decolonization Era’

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## I. Introduction

Today, it seems both easy and difficult to write the history of the World Bank in the 1950s and 1960s. On one hand, major works on this history have been published in the past twenty years; the Bank is the object of various critical and comprehensive accounts.<sup>1</sup> On the other hand, however, the picture that has emerged seems somewhat fixed, showing the Bank as the perfect villain, a posterchild of managerialism, liberal legal expansionism, Western-centric neo-liberalism. The Bank features almost like a magician exemplifying, if not driving, all these trends. But this picture is in parts shaped by the Bank of the 1980s, 1990s, and 2000s, by the neo-liberal era, and by its effects on the global order.

The story of the World Bank, the development system and the battle over financial support for the ‘newly independent states’ in the 1950s and 1960s is more ambivalent—and full of tragic turns. It is less black and white, less like the story of concessions, corporations or investment law, where Northern governments more brazenly blocked Southern demands or refused interaction.<sup>2</sup> With regard to the history of the Bank, much of what might have been perceived as victories of the third world (TW) governments at the time, turned into ambivalence and problems: With the International Development Association (IDA) a new branch of the Bank was created and the Bank turned into a development agency initially against strong Western resistance—but power in the Bank was not shared and the financial engagement became increasingly linked to substantive influence, foreshadowing

<sup>1</sup> Devesh Kapur, John P Lewis and Richard Webb, *The World Bank: Its First Half Century, Vol 1: History* (The Brookings Institution 1997) (hereafter Kapur, *World Bank*); Sundhya Pahuja, *Decolonising International Law* (CUP 2013) (hereafter Pahuja, *Decolonising International Law*); Balakrishnan Rajagopal, *International Law from Below* (CUP 2003) (hereafter Rajagopal, *International Law*); Gilbert Rist, *The History of Development* (Zed Books 2014); Bret Benjamin, *Invested Interests: Capital, Culture and the World Bank* (University of Minnesota Press 2007) (hereafter Benjamin, *Invested Interests*); Philipp Dann, *The Law of Development Cooperation* (CUP 2013) (hereafter Dann, *Law of Development Cooperation*); Eric Helleiner, *Forgotten Foundations of Bretton Woods* (Cornell University Press 2014); Guy F Sinclair, *To Reform the World: International Organizations and the Making of Modern States* (OUP 2017).

<sup>2</sup> See Craven, Brunner, Sornaraja, Pahuja/Saunders, all in this volume.

conditionality. An entire institutional ecosystem was built around the demands of TW governments—but it was also fragmented, over time impeded synergies, and lacked funding. The concept of 'development' was planted at the centre of thinking, which was partly a recognition of Southern concerns in law and institutions—but also initiated the othering mechanism of the 'development' paradigm, which keeps TW peoples in Chakrabarty's 'waiting room of history'.

Ultimately, a certain dynamic and strategy of the Bank and Northern governments comes to the fore when looking at those years that is reminiscent of classic hegemonic moves. Southern demands here were not simply rejected or blocked, but rather redirected, diverted, and ultimately subverted. Almost like in the far-Eastern fighting technique of Aikido, where the energy and dynamic of an attack is not absorbed but returned and redirected against the attacker, the demands of the TW here were responded to by creating the IDA, thereby transforming the World Bank and turning it into the agency that later became 'the symbolic antagonist for a vast array of social movements'.<sup>3</sup> The creation of the IDA in 1960 was a central turning point in the larger battle about financial support for the 'newly independent states'—and ultimately appears like a tactical move of Northern governments in the Bank to integrate certain claims of Southern governments just to cap further, more disruptive demands.

This chapter looks at this Aikido-move of Northern governments and the larger battle from three perspectives. First, Section II describes the political battle to institutionalize more development financing, placing the evolution of the Bank and in particular the creation of the IDA in the broader context of the battle between North and South over institutional structures of redistribution and financial support. Section III then looks at the discursive turn and rhetorical recognition but also placation and pacification of the South undertaken by the Bank mainly in the 1960s. Finally, Section IV investigates the role of institutional law in this battle and argue that law played an important role in deflecting Southern demands and actually shielding the Bank even more.

## II. The battle for concessional funding and the creation of the IDA

In most new states, the question of economic independence arose at the moment of formal political independence. Most were in dire straits and in urgent need of economic progress. Hence, as greater numbers of colonies gained independence in the late 1940s and early 1950s, the need for financial support was discussed. In fact, it has been observed that 'from 1950 until at least 1960, 'financing of economic

<sup>3</sup> Benjamin, *Invested Interests* (n 1) 112.

development' was the 'most passionately debated economic issue at UN'.<sup>4</sup> It was consensus that trade would be the most important way for the new states to earn money.<sup>5</sup> But it was also clear that in order to reach sustainable trading relations and produce more than raw materials, a process of industrialization was necessary, for which investments and funds were needed. At the same time, it was understood that TW countries were not able to receive loans on normal market conditions; instead, concessional funding (in particular, loans with lower interest rates and longer payback times) was needed.

The main issue was from whom such concessional funding should come.<sup>6</sup> Economic experts and TW countries (led in particular by Chile, India, and Yugoslavia) in the United Nations (UN) argued for the creation of an international multilateral agency that would provide concessional funding. The concrete idea was that a Special UN Fund for Economic Development (SUNFED) should be created.<sup>7</sup> However, Western countries (led by the United States (US) and the United Kingdom (UK)) strenuously blocked these efforts. They argued that the UN should provide only technical assistance and hence supported the EPTA, but saw no role for the UN in providing capital support. They especially voted against all proposals for SUNFED.

Soon after, the International Bank for Reconstruction and Development (IBRD) (also known as the World Bank, or Bank) became an inflammatory topic in the discussion, as many in the TW demanded it should take on a broader role.<sup>8</sup> The Bank and its Western allies, however, thought nothing of this demand. Created in the context of the Anglo-American attempt to create an international institutional system that would further their interests in the world after the Second World War, its mandate and geopolitical role in the eyes of its main shareholders (ie, Western founding member states) was to provide funding for the reconstruction of war-torn countries of the North, not the South. Neither was 'development' conceptually on the horizon of most Northern negotiators, nor was actual decolonization considered an imminent reality.<sup>9</sup> Early on and in line with these expectations, this created a specific institutional culture that oriented the Bank towards private financial markets, in particular Wall Street. Because even though the IBRD had a base capital, it was supposed to finance its ongoing operations through issuing bonds and selling them at the private financial markets (ie, Wall Street). Therefore,

<sup>4</sup> Edward S Mason and Robert Asher, *The World Bank since Bretton Woods* (The Brookings Institution 1973) 38.

<sup>5</sup> On these discussions, Olav Stokke, *The UN and Development: From Aid to Cooperation* (Indiana University Press 2009) 84 (hereafter Stokke, *The UN and Development*); Kapur, *World Bank* (n 1) 1121.

<sup>6</sup> See Stokke, *The UN and Development* (n 3) 93–98.

<sup>7</sup> *ibid* 95.

<sup>8</sup> Kapur, *World Bank* (n 1) 1127; Jonas Haralz, 'The International Finance Corporation', in Kapur, *World Bank* (n 1) 811 (on the annual meeting of the bank in 1954); Helleiner, *Forgotten Foundations* (n 1) 268.

<sup>9</sup> On the creation and the slipping of 'development' into the mandate, Pahuja, *Decolonising International Law* (n 1); on planning for decolonization, see Barsalou Chapter 19 this volume.

establishing credibility with financial centre was a necessary strategy. The IBRD aimed to be more of a Bank than an international organization. Loans were awarded only according to strict Wall Street conservative, risk-averse style. There was no interest or sensibility for TW needs and TW countries were unable to fulfil the stringent lending conditions.

In the course of the 1950s, however, the Bank's business model and its original geopolitical role became increasingly questioned. Formal decolonization accelerated and the context changed dramatically. The emerging and intensifying Cold War locked the West in a direct competition with the Soviet Union and created an indirect global contest for geopolitical influence.<sup>10</sup> Any unrest and dissatisfaction in the TW bore the risk of tipping countries into the communist camp. To contain communism it soon became clear that economic support (development aid) and security could form an important link, extending concepts of colonial administration since the 1920s that 'caring for the welfare of the natives was a technique of colonial domination' and that developmental intervention could be used to quell unrest and create loyalties. The IBRD was viewed by many actors in the North as an important instrument to push back Soviets wherever possible, and not acquiescing with the poor had political risk.<sup>11</sup>

At the same time, an ideological paradigm shift took place that Arturo Escobar called the 'discovery of poverty'.<sup>12</sup> While colonial exploitation had always been covered up and justified by motives of salvation (based on Christian or other humanitarian causes), only in the first half of the twentieth century did the economic well-being of the colonial subjects become a topic, and those subjects an object of intervention.<sup>13</sup> By declaring them 'poor' or 'under-developed' (and hence establishing a distinction between developed and under-developed) not only were two-thirds of the world's population defined as lacking something—but also as needing help.<sup>14</sup> This shift became a central tenet of Western foreign policy and its global aspirations, most overtly with the inaugural address of Truman 1949. As the US tried to distance itself from the increasingly untenable imperial justification of foreign interventions, the rhetoric of development provided a welcome rationale for global intervention beyond market interests and the security concerns vis-à-vis the Eastern bloc.

<sup>10</sup> Odd A Westad, *The Global Cold War: Third World Interventions and the Making of Our Times* (CUP 2007) (hereafter Westad, *The Global Cold War*); Rajagopal, *International Law*, (n 1) 99–101.

<sup>11</sup> Rajagopal, *International Law* (n 1) 106.

<sup>12</sup> Arturo Escobar, *Encountering Development The Making and Unmaking of the Third World* (Princeton University Press 2012) 21; Rajagopal, *International Law* (n 1) 105–08; Pahuja, *Decolonising International Law* (n 1) 61–66.

<sup>13</sup> Jennifer L Beard, *The Political Economy of Desire: International Law, Development and the Nation State* (University of Melbourne Research Paper 2009).

<sup>14</sup> Guy Sinclair, *To Reform the World* (n 1) frames this point a bit differently, namely as 'dynamic of liberal reform, which by seeking to maximize liberty, requires incessant fine-tuning of institutions, individuals and society' (283).

In these circumstances, the battle for a 'development bank' continued and pressure grew on Western states (the US especially) to react. There were many calls for a (multilateral) institution that could provide financial support to poorer nations, which could not fulfil the strict lending criteria of IBRD.<sup>15</sup> This demand was voiced in the UN but also prominently at the Asian–African Conference in Bandung in 1955. The topic of economic cooperation actually topped the final communique, declaring that 'assistance being received [ . . . ] from outside the region, through international or bilateral arrangements made a valuable contribution'. TW leaders demanded more financial and technological support from the West and clearly preferred multilateral lending over bilateral assistance.<sup>16</sup>

The Bank was a highly ambivalent object in this debate. On one hand it was indeed the only multilateral Bank at the time and well-funded. It had also projected an image of a somewhat objective and ultimately non-aligned institution with special expertise that could be used by TW countries. At the same time, the Bank was also highly suspect because of its discriminatory voting structure. As much as funding was called for, so was equal participation in the economic governance a central demand, and the structures in the Bank a constant reason for critique.<sup>17</sup> The preference for many TW countries therefore was still the establishment of a capital fund at the UN.

Throughout the 1950s, the US government made various moves to diffuse the demands. The Eisenhower administration first tried to influence the debate by suggesting that funds for concessional lending should come from those who agreed to disarmament.<sup>18</sup> In the climate of an intensifying Cold War, this was simply a distraction. The US then signalled openness to another idea. Already in 1952, the UN Economic and Social Council (ECOSOC) had called for the creation of an agency that should provide funding for private corporations investing in the TW. Even though there was clear resistance to this in the Bank, this idea gained momentum, and the US pushed the World Bank to create a second branch to provide such funding, resulting in 1956 in the creation of the International Finance Corporation (IFC).<sup>19</sup>

This did not solve the question of concessional lending to TW states. In this regard, majorities shifted in the second half of the 1950s and sympathy grew also in US (especially in the state department and from Democrats) to redesign the

<sup>15</sup> James H Weaver, *The International Development Association* (Praeger 1965) 11–17; 'Report on a Special United Nations Fund for Economic Development', prepared by a committee appointed by the Secretary General and presented to the 16th ECOSOC session 1953.

<sup>16</sup> Though the Bank itself was not present at the conference, its influence at the conference is deemed considerable. On Bank and Bandung, Benjamin, *Invested Interests* (n 1) 117–24 (esp. 121–23).

<sup>17</sup> See Ram P Anand, *Sovereign Equality of States in International Law* (Collected Courses of the Hague Academy of International Law, Vol 197 (The Hague Academy of International Law 1987)).

<sup>18</sup> Stokke, *The UN and Development* (n 5) 96.

<sup>19</sup> Stokke, *The UN and Development* (n 5) 100–02; Jonas Haralz, 'The International Finance Corporation' in Kapur, *World Bank* (n 1) 807–12; Bronislaw Matecki, *Establishment of the International Finance Corporation and US Policy* (Praeger 1957).

system. Anti-communists viewed the Bank as an under-utilized instrument to contain communism. Internationalists and those driven by more humanitarian or liberal causes advocated for expanding the IBRD's reach.<sup>20</sup> But there was equally strong resistance from isolationists and conservatives in the State Department, from within the Bank (particularly from its President, Eugene Black) and from other IBRD member states such as Germany.<sup>21</sup> The management of the Bank in particular was very reluctant to endanger its hard fought for reputation as 'neutral' and independent institution.<sup>22</sup>

The battle was decided when the UN, with Soviet bloc support, moved to create a special fund; this move scared the US into action, and the US Senate also pushed for the creation of the IDA.<sup>23</sup> When the US government insured the Bank leadership that control over a new, soft lending institution was not to be relinquished, the Bank management agreed. In July 1959, the US ordered its executive director to draft articles for the IDA. It took up work in 1960 as a soft-lending window of the Bank.<sup>24</sup>

Political control of the new organization was structured the same way as the IBRD and hence it remained in the hands of the US and its allies.<sup>25</sup> Although legally a separate organization, the IBRD's governors, president, and executive director held *ex officio* the same position in the IDA. Also, the outward safeguards 'against politicization' remained.<sup>26</sup> Two aspects of its institutional and legal framework, however, mark the considerable shift away from the IBRD model—and the profound transformation of the Bank that took place: First, the new organization received a mandate 'to promote economic development, increase productivity and thus raise standards of living in the developed areas of the world.'<sup>27</sup> This would allow the support of projects 'for purposes which are of developmental priority'<sup>28</sup> and allowed the IDA to offer financial support to new group of poorer states but also to be thematically open to social issues (eg. education, health, agriculture).

Secondly, the funding of the new organization followed a completely different model than the one used in the IBRD. Instead of financing the institution through

<sup>20</sup> Mark Mazower, *No Enchanted Palace: The End of Empire and the Ideological Origins of the United Nations* (Princeton University Press 2013) Kapur, *World Bank* (n 1).

<sup>21</sup> Benjamin, *Invested Interests* (n 1); on Black's ambivalent/complex position also Sinclair, *To Reform the World* (n 1) 222; Kapur, *World Bank* (n 1) pp. 136, 1124–29; Stokke, *The UN and Development* (n 5) 93–102.

<sup>22</sup> Sinclair, *To Reform the World* (n 1) 222.

<sup>23</sup> Stokke, *The UN and Development* (n 5) 101; Kapur, *World Bank* (n 1) 1127–29.

<sup>24</sup> Sinclair, *To Reform the World* (n 1) 225.

<sup>25</sup> That is to say, voting rights were weighted according to the level of subscriptions; IDA Articles of Agreement art VI s 3.

<sup>26</sup> Non-political mandate (IDA Articles of Agreement art V s 6) and requirement to support only 'specific projects' (IDA Articles of Agreement art V s 1(b)).

<sup>27</sup> IDA Articles of Agreement art I.

<sup>28</sup> IDA Articles of Agreement art V s 1(a–c).



interests from borrowers and bonds placed at private markets, the IDA was to be funded solely by its members states. Every three years, member states who could afford it would be asked to provide new money in so-called ‘replenishments’. This severed the dependence of the Bank from its reputation at Wall Street—and allowed the member states (and the IDA) to put its political and developmental interests at the centre of its agenda. It ultimately created the chance to transform the institutional culture and understanding of the institution and create the development agency that the Bank then became—but it also deepened the inequality between the member states.

At the same time, the creation of the IDA was only one element of a wider institutional reconfiguration and institutionalization of the development paradigm. Around the year 1960, a plethora of institutions was created to administer the process of development, including the provision of concessional funding.<sup>29</sup> In this broad move to institutionalization of the development paradigm, two different types of lending institutions emerged: one replicated the power structures at the UN, the other rather the power structures in the World Bank. The first type was advanced by a coalition of TW and the Soviet bloc governments. They created a fund to provide technical assistance, first the UN Special Fund for Development in 1959, which in 1964 was merged with the Expanded Programme for Technical Assistance (EPTA) to become the UNDP.<sup>30</sup> In 1961, the World Food Program was created, the UN Conference on Trade and Development (UNCTAD) in 1964, the UN Industrial Development Organization (UNIDO) in 1966, and the International Fund for Agricultural Development (IFAD) (a latecomer) in 1977. In all of these institutions, the principle of equality and one state–one vote applied.

The other type were regional development banks.<sup>31</sup> All of these copied the institutional model of the World Bank, in which institutional power is reserved to its main shareholder (ie, often the donating Northern countries), the façade of a non-political neutral banks is erected and a separation between soft/concessional lending and hard/non-concessional funding is ensured through a combination of contributions by member countries (IDA model) or independently earned money through interests from loans or bonds issued at the financial markets (IBRD model).<sup>32</sup> These institutions became intensely courted and followed by the US and

<sup>29</sup> Marc Frey, Sönke Kunkel, and Corinna R Unger (eds), *International Organizations and Development 1945–1990* (Palgrave 2014); see also Stokke, *The UN and Development* (n 5).

<sup>30</sup> On these debates, see Stokke, *The UN and Development* (n 5) 98; see also Helleiner, *Forgotten Foundations* (n 1) 268.

<sup>31</sup> Inter-American Development Bank (1959), African Development Bank (1964), Asian Development Bank (1966).

<sup>32</sup> Dann, *Law of Development Cooperation* (n 1) 161; Suzuki Eisuke, ‘Regional Development Banks’ in Rüdiger Wolfrum (ed), *Max Planck Encyclopedia of Public International Law* (OUP 2013) (hereafter Suzuki, ‘Regional Development Banks’); Stephen D Krasner, Power Structure and Regional Development Banks (1981) 32 International Organisation 32 303; Ruth Ben-Artzi, *Regional Development Banks in Comparison* (CUP 2016) 64; Kapur, *World Bank* (n 1) 137–38.

other Northern governments to ensure that they became like-minded partners and collaborators.<sup>33</sup>

In sum, Southern demands to create more institutions that would provide concessional funding, which were initially focused on a greater role of (egalitarian) UN participation, were diverted into a restructuring of the Bank by creating the IDA. A move that had been intended to bolster not just financial support but also political autonomy in using such finances turned the Bank into an even more hierarchical and oligarchic institution and strengthened the Northern dominance in the 'engine room' of development finance.

### III. Changing discourse and red lines

Institutional battles were accompanied by discursive battles, which, as the 1960s unfolded, took place amid a more general atmospheric shift. The Cold War was intensifying, and many observers perceived the Soviets as gaining an upper hand, which put pressure on the West. In the US, Germany, and the UK, new liberal governments came to power and liberalization and emancipation became major themes of societal discussions. These developments also gave North–South relations an increasingly central place in many Western debates. But while there was a growing number of people in the North who advocated fair relations between North and South, many in the North also seemed to consider these times as a global crisis, almost creating the impression of hysteria over the dangers posed by the gulf between poor and rich.<sup>34</sup>

Debates in the TW and attitudes towards the institutionalized development system (including the Bank) became increasingly diverse and critical,<sup>35</sup> and connected to the rise of neo-Marxist dependency theory, which turned the political and ideological focus to a fight for fair trade (and hence rather towards GATT and UNCTAD).<sup>36</sup> However, there were also a number of fundamental critiques from the TW of the development aid system as it had emerged, one of which was Frantz Fanon. In his 1963 book *The Wretched of the Earth*, while not naming the Bank, he lucidly analyses the encounter between national liberation movements and international finance—and formulates political imperatives for those interested in contesting the Bank's (and other financier's) demands.<sup>37</sup> He argues that TW peoples

<sup>33</sup> Allies of the Bank also emerged in the form of bilateral funding agencies in Western countries, for example, in Germany (the Ministry for Development Cooperation was created in 1962), in the US (creation of USAID), and the collective forum of these bilateral agents in the OECD; see Dann, *Law of Development Cooperation* (n 1) 53, 209.

<sup>34</sup> On McNamara in this regard, Benjamin, *Invested Interests* (n 1) 87–89.

<sup>35</sup> On the different camps already at Bandung, see Vijay Prashad, *The Darker Nations: A Peoples History of the Third World* (The New Press 2008) 33.

<sup>36</sup> Dann, *Law of Development Cooperation* (n 1) 65.

<sup>37</sup> Frantz Fanon, *The Wretched of the Earth* (Grove Press 1963) 66 (hereafter Fanon, *The Wretched of the Earth*).



should demand a decisive redistribution of wealth, not the token pieces of aid, insisting that capitalist powers simply ‘must pay’ and that such a payment is unrelated to charity.<sup>38</sup>

Even more direct was the Ghanaian leader Kwame Nkrumah, who in his 1966 book *Neocolonialism: The Last Stage of Imperialism* took direct aim at the Bank. In the book he argues that the Bank’s role was mostly in furthering Northern banking and financial interests by opening up Africa, making investments there profitable for Northern capital without regard for local needs. As he sees it, Northern banking interests (which the Bank serves) are replacing colonial arrangements, while the Bank helps to erect ‘neo-colonial trap of “multilateral aid” through international institutions’.<sup>39</sup> At the same time, a Pearson report showed a growing frustration in the North and within the aid system about the slower than expected pace of creating change.<sup>40</sup>

Such voices and the shifts in public mood didn’t go unnoticed. The Bank acknowledged the dissent, and tried to divert anger; again, using Aikido-style methods (turning hostile energy against the opponent), it redirected feelings of discord to themes of the TW, announced that it had learned lessons from the past, and tried to diffuse pressures. With the creation of the IDA, it started to provide concessional lending and became active in a number of new policy fields, especially education, health, and agriculture.<sup>41</sup> Its new president George Woods vocally praised this new engagement and was celebrated for it by many representatives from the TW.<sup>42</sup> One reason for this substantive but also rhetorical shift was the new funding structure. The need to raise contributions (replenishments) from its main shareholders forced the Bank to turn (at least in parts) away from Wall Street as its main audience, and to new broader audiences, such as parliaments in Northern states and the general public there, especially in the US (resulting in awarding out-sized power to USNGOs and Congress).<sup>43</sup>

At the same time, the Bank aimed to address broader audiences in the South and engage with themes dominant there, for example, colonialism. The Bank in its early years had seen rather through the eyes of its Northern (if not British) shareholders. Now it started to acknowledge at least the colonial trauma and the broad justifications for anti-colonial hostilities, though it framed these more as problems

<sup>38</sup> Ibid 102-3.

<sup>39</sup> Kwame Nkrumah, *Neo-Colonialism: The Last Stage of Imperialism* (Panaf Books Ltd 1971) 242 (hereafter Nkrumah, *Neo-Colonialism*); on Nkrumah’s role generally /in the liberation of Ghana, see Martin Meredith, *The State of Africa: A History of the Continent Since Independence* (Simon & Schuster UK 2013) 18 (hereafter Meredith, *The State of Africa*).

<sup>40</sup> Lester Pearson, *Partners in Development: Report of the Commission on International Development* (Praeger 1969); Dann, *Law of Development Cooperation* (n 1) #.

<sup>41</sup> Kapur, *World Bank* (n 1) 140; (Benjamin, *Invested Interests* (n 1) 83–88; Rajagopal, *International Law* (n 1); Pahuja, *Decolonising International Law* (n 1)).

<sup>42</sup> Sinclair, *To Reform the World* (n 1) 233.

<sup>43</sup> Benjamin, *Invested Interests* (n 1) 65–66.

of a dramatic cultural encounters of economic exploitation and political violence.<sup>44</sup> Nationalism was another central and even trickier theme,<sup>45</sup> which had become the central TW sentiment in the age of national independence. But it could also trigger dynamics deeply problematic for the Bank, namely, the tendency towards isolationism and towards economic nationalization, both of which endangered the Bank's mode of operation and ideology (based on international cooperation and open markets). Addressing nationalism, the Bank tried to turn it into a productive instrument of development interventions (state as central economic actor) and to dispel regional solidarity (or opposition; it was easier to negotiate with one than with many). It hence tried to put forward-looking spins on these themes—again, from its Western, liberal perspective.

The difficult nature of the interactions with the South and the ultimate red lines and policy of the Bank, however, resulted in an intense dispute between the Bank and the UN over the Bank lending to both the apartheid regime in South Africa and the still-colonial power in Portugal.<sup>46</sup> In 1961, the UN General Assembly implemented the UN's Declaration on the Granting of Independence to Colonial Countries and Peoples (Resolution 1514(XV)) by establishing a special committee 'to examine the application of the Declaration' and requested 'the specialized agencies concerned to assist the Special Committee in its work within their respective fields.'<sup>47</sup> This was squarely directed at the World Bank and its lending policies, and a copy of this resolution was forwarded to the president of the World Bank. There, however, it lingered for some time without any response. In mid-1964, the UN Secretariat wrote to the Bank, again seeking information about bank loans to Portugal and asking about 'the possibility of representatives of the Bank appearing before the Committee in order to provide clarification'. The Bank again was cool, sending the information but ignoring the invitation. In June 1965, while the Bank continued to ignore the demands, the Committee passed a resolution containing stronger language appealing 'to all the specialized agencies of the United Nations, and in particular the IBRD [ . . . ] and request[ing] them to refrain from granting Portugal any financial, economic or technical assistance so long as the Portuguese Government fails to renounce its colonial policy, which constitutes a flagrant violation of the provisions of the Charter of the United Nations'. The Bank, however, continued its silence. Instead, it granted two loans to Portugal and South Africa in 1966 and left it to its General Counsel to respond to the UN. What followed were intense and at times heated exchanges between the legal departments of the

<sup>44</sup> *ibid* 83–86 (arguing that the Bank cast itself as new, uncompromised, and responsible forward-looking actor).

<sup>45</sup> *ibid* 73–79.

<sup>46</sup> Samuel A Bleicher, 'UN vs IBRD: A Dilemma of Functionalism', (1970) 24 *International Organization* 31.

<sup>47</sup> UNGA Resolution 1654 (XVI).

UN secretariat and the Bank, in which the UN demanded that the Bank stop its lending; the Bank rather used these demands to test and fortify its version of institutional autonomy, using in particular its non-political mandate.

Ultimately, next to some critical voices and anger over the symbolism of funding racist and colonial regimes, much of the TW political leadership retained a largely constructive and reformist attitude. The conceptual companionship between elites in South and North was still broad, as modernization theory and Keynesian economic thinking provided a common understanding for the needs of 'development' and respective interventions.<sup>48</sup> The Bank also invested considerable resources to cultivate links to nationalist leaders and diffuse rhetorical and political antagonism.<sup>49</sup> That the Bank portrayed itself as neutral, non-aligned, economic actor might also have resonated with some in the South, for example in non-aligned India, a major client of the Bank.<sup>50</sup>

#### IV. Institutional law as weapon

In these institutional and discursive battles over the position and course of the Bank, and in the larger questions of development finance, institutional law played a central role. It was not just a major weapon in locking up the institutional 'engine room', preserving Northern power against TW influence, but it also provided argumentative planks to counter demands. In fact, institutional law became the central instrument to deflect and divert Southern demands and launch counter-strikes that further insulated the Bank against the egalitarian dynamic of decolonization, and which thereby strengthened the North's position. Three aspects demonstrate how and under which conditions institutional law was used in this regard: first, the normative basis of the Bank's positioning, second, a strategy of instrumentality and legal acumen to use this normative basis, and finally, functionalism that allowed for the Bank's self-positioning.<sup>51</sup>

<sup>48</sup> Rajagopal, *International Law* (n 1) 31 ff; Dann, *Law of Development Cooperation* (n 1) 58.

<sup>49</sup> Benjamin, *Invested Interests* (n 1) 115.

<sup>50</sup> On the close connection between the Bank and India, see Bruce Muirhead, 'Differing Perspectives: India, the World Bank and the 1963 Aid-India Negotiations' (2005) 4 *India Review* 1; Kapur, *World Bank* (n 1) 140.

<sup>51</sup> My focus here is on the role of law within the institution. Others have focused on the interaction of the Bank and the process of state formation (especially Guy Sinclair) or on the larger narrative of international law (especially Sundhya Pahuja and Balakrishnan Rajagopal). I think, however, that there is also a distinct and under-researched role that institutional law played in these years with regard to positioning the Bank vis-à-vis the TW. Thinking in a similar vein, see Dimitris Van den Meerssche, 'International Law as Insulation: The Case of the World Bank in the Decolonization Era', Paper presented at the ESIL Interest Group on International Institutional Law, ESIL Annual Conference, Manchester, UK, 13 September 2018 <[https://igioesil.files.wordpress.com/2018/10/dimitri-van-den-meerssche\\_io-ig-conference-draft1.pdf](https://igioesil.files.wordpress.com/2018/10/dimitri-van-den-meerssche_io-ig-conference-draft1.pdf)> accessed 31 May 2019.

## 1. Normative basis

The use of law was based on several legal cornerstones that had been set down in the IBRD Articles of Agreement in 1945 and were preserved or even strengthened in the IDA Articles in 1960. One was the system of weighted votes, linking funding prowess and voting power and hence tying political influence in the Bank to financial investment. Introduced in the IBRD agreement (IBRD Articles of Agreement art V s 3) it was in fact cemented, if not radicalized, with the cyclical funding scheme introduced for the IDA (replenishments, IDA Articles of Agreement art III s 1). This scheme gave those member states, which had and wanted to invest the money, direct political and thematic influence. This scheme aggravated the institutionalized inequality and flew in the face of all demands for fair (if not equal) participation in running the institution. It ensured that accountability in the World Bank was only to first world shareholders, not to Southern member states or those affected in the South. It relegated the South even more to being mere 'borrowers' or 'recipients'. It was the rejection of solidarity<sup>52</sup> and the installation of oligarchic charity.<sup>53</sup>

The other clauses shielding the Bank and providing both legal and political support for its actions were those that created its façade of political neutrality and technicality: the non-political mandate (IBRD Articles of Agreement art IV s 10, and IDA Articles of Agreement art V s 6) and the 'specific project'-clause (IBRD Articles of Agreement art III s 4(vii), and IDA Articles of Agreement art V s 1(b)). These created an aura of objective expertise, which was widely believed—despite the fact they were politically instrumentalized from early on.<sup>54</sup> These aspects were

<sup>52</sup> On the fragile concept of solidarity in development law, see Philipp Dann, 'Solidarity and the Law of Development Cooperation' in Rüdiger Wolfrum and Chie Kojima (eds), *Solidarity: A Structural Principle of International Law* (Springer 2009), 55–77.

<sup>53</sup> It is a separate but telling story that the EU (at the time the European Economic Community, EEC) took a different path in their dealing with the TW. Here, the shift to soft lending was accompanied by a considerable reconfiguration of the terms of cooperation and a scheme of equal participation (on these developments, see Dann, *Law of Development Cooperation* (n 1) 43, 75; see also Marjorie Lister, *The European Community and the Developing World: The Role of the Lomé Convention* (Gower Publishing Company Ltd. 1988) 14; Enzo R Grilli, *The European Community and the Developing Countries* (CUP 1993) 27. When the EEC was founded in 1957, French and Dutch empires still existed and the new community was immediately used to organize funds for (very different) projects there. However, during the ensuing years of decolonization, two interesting shifts occurred. To accommodate the fact that the partners now had gained independence, the cooperation was based on a multilateral agreement, the Yaoundé Convention, which took effect in 1964. Here, new countries faced Europe not as single countries, but as a collective. This distinguished their negotiation position vis-à-vis the EEC. But second, and more importantly, demands grew over the terms of cooperation for a fair division of labour and Southern influence. This resulted in a widely hailed new treaty, the 1975 Lomé Agreement, which contained a truly cooperative approach and was hailed as a broad success of TW-governments.

<sup>54</sup> For example, through the introduction of programming loans, technical assistance, or diplomacy; see Sinclair, *To Reform the World* (n 1); Helleiner, *Forgotten Foundations* (n 1). But see also Michele Alacevitch, *The World Bank's Early Reflections on Development, Review of Political Economy* (Stanford University Press 2009) 227 (who argues that, in its early years, the Bank refrained consciously from more social lending policies).

strengthened by the mandate for ‘development and growth’, again supported in the IDA (IDA Articles of Agreement Preamble, art I, art V s 1(a)–(b)), which provided a legal basis to give shape to the Bank’s take on the emerging ideology of development.

Incidentally, these clauses were young innovations in international institutional law of the time with European roots. The idea of an organization created by states (and an international agreement) but with the power and knowledge structure of a private bank, run not by governments directly but by experts, was invented at the creation of the Bank for International Settlements (BIS) in 1930, considered the first ‘international financial institution.’<sup>55</sup> The BIS was created by European governments (Belgium, France, Germany, UK, and Italy) plus Japan to deal with (settle) reparation payments of Germany after the First World War, which proved to be contentious and difficult between the involved governments. The idea at the time was to have an institution that was shielded from direct government interference and run by central banks in order to generate expertise-based trust among partners.<sup>56</sup> It was then picked up at Bretton Woods and introduced into the IBRD articles.

## 2. Institutional structure and legal acumen

Again, these were only contractual clauses—‘law in the books’ that could be ignored, and that became a reality only through those applying and using it. It is in this regard that the practice of the Bank, particularly its use of the law, is especially characteristic. It is the masterful deployment and selective use of these clauses and institutional law generally that mark the Bank’s strategy in the 1950s and 1960s here. Law (back then as today) had no intrinsic value at the Bank, but rather was seen as strictly instrumentalist. It was put to strategic use to advance the interests of the Bank and its main shareholders.<sup>57</sup> Law was not a value in itself, but rather a weapon used in the battles.

The instrumental use of law was enabled by the institutional structure in the Bank, concretely, the interplay between Executive Board and General Counsel.<sup>58</sup> According to the founding treaties, the executive directors have the power to

<sup>55</sup> Mark Jacobs, ‘Bank for International Settlements’ in Rüdiger Wolfrum, *Max Planck Encyclopedia of Public International Law* (OUP 2013).

<sup>56</sup> Helleiner, *Forgotten Foundations* (n 1) 55. The plan to create a similar structure in the Americas, that is, an Inter-American Bank, actually faltered because Latin American countries objected both to the dominant position of the US as well as to US policy-makers (Helleiner, *Forgotten Foundations* (n 1) 71).

<sup>57</sup> It is interesting to note how much this is in contrast to the Bank’s later use of ‘rule of law’ vis-à-vis its borrowers. The Law and Development movement, which came to life in these years, had no support from the Bank. On the evolution of the Bank’s use of law, see Philipp Dann, *Many Faces of the World Bank as a Legal Actor*, Manuscript on file with the author (hereafter Dann, *Many Faces*).

<sup>58</sup> On the institutional structure generally, Dann, *Law of Development Cooperation* (n 1) 180.

interpret and further develop the Bank's founding treaty (a telling decision, considering that the weighed voting structure thereby applied also to the presumably 'technical' matters of legal interpretation).<sup>59</sup> In practice, however, this power was soon linked, if not outsourced, to the legal advice given by the leading legal minds in the Bank. The executive directors were mostly *not* lawyers, but were happy to get creative advice on how to reach desired outcomes on legally safe ground. Aron Broches in particular gave such advice in those years, and became the Assistant General Counsel of the Bank in 1951, and General Counsel in 1959, in the latter of which he played a formidable and formative role.<sup>60</sup> Broches earned this trust through his astute legal acumen, which contributed majorly to the positioning of the Bank in the battles of the 1950s and 1960s.

A central element of Broches's legal insight was his strategic mix of flexibility and rigidity in using the Bank's law, examples of the former are manifold, the best known being the loose interpretation of the term 'specific project'.<sup>61</sup> Much less known but equally significant was the very unorthodox (to put it mildly) practice of the executive directors to decide about the creation of new branches of the Bank. As described earlier, the decisions to create the IDA (and the IFC) came after long political battles and were therefore politically highly sensitive. Considering this, it is stunning to learn that the IFC and the IDA were both created by a decision of the Executive Board (and hence with all the weighed voting applying) —and not by a separate conference of state parties using the principle of one state—one vote, as per the usual procedure.<sup>62</sup> This approach to the creation of two entirely new international organizations was not based on any formal decision, but simply informal interpretative practice.

But there were also examples where Broches and the Bank used the law with utter rigidity. A prime example is the already mentioned dispute about apartheid and racism in cases of South Africa and Portugal. Despite urgent and direct appeals by the UN to the Bank to refrain from supporting the racist regimes in South Africa and Portugal, the Bank insisted on its inability to take into account the racism of both regimes—in stark contrast to its ability to take into account the (socialist) domestic regimes of other potential borrowers (eg, Cuba or Chile). Here, Broches insisted that the Bank's articles would simply leave no room for manoeuvre.

<sup>59</sup> Art IX IBRD, art X IDA; see Henry G Schermers and Niels M Blokker, *International Institutional Law: Unity within Diversity* (Brill 2011) § 1356.

<sup>60</sup> Aron Broches was a Dutch citizen who had studied law in the US, was a legal officer for Netherland's delegation at the Bretton Woods conference, and joined the Bank in 1946. See Aron Broches, *Selected Essays: World Bank, ICSID, and Other Subjects of Public and Private International Law* (Kluwer Academic Publishers/Martinus Nijhoff Publishers 1995).

<sup>61</sup> Pahuja, *Decolonising International Law* (n 1); Sinclair, *To Reform the World* (n 1), Kapur, *World Bank* (n 1) 168–69.

<sup>62</sup> Aron Broches, 'International Legal Aspects of the Operations of the World Bank' Aron Broches (ed), *Selected Essays: World Bank, ICSID, and Other Subjects of Public and Private International Law* (Kluwer Academic Publishers/Martinus Nijhoff Publishers 1995) 28–29 (hereafter Broches, 'International Legal Aspects').



This strategic mix of flexibility and rigidity can be reformulated as a mix of constitutionalism and formalism in the interpretation of institutional law. Broches often reverted to the language of constitutionalism to understand the founding treaties.<sup>63</sup> Constitutionalist language allowed for a dynamic and expansionist reading of World Bank competences and cast the expansion of the Bank's power as normal organic growth of an international organization. At the same time, he could tap into a still-strong culture of and belief in legal formalism, insisting on the literal reading of legal clauses and drawing legitimacy from such a formalist approach. As in other cases, Northern lawyers were very clever (and shameless) in mixing styles of argumentation, while hypocritically accusing others of doing so.<sup>64</sup>

The strategic use of law by the Bank to position itself and fight in the political, economic, and legal battles of the time went further than this. For example, early on the Bank pursued a strategy of diffusion. The Bank worked to export its institutional model and thereby shape the institutional environment and create partners, for example, in the founding of other development banks.<sup>65</sup> Another strategy was that of proceduralization, where the Bank created procedural structures to help diffuse interests and create institutional hegemony for the Bank's interests, such as done in the ICSID.<sup>66</sup>

### 3. Functionalism as enabling factor

The instrumentalist and strategic use of institutional law was aided not only by institutional structure and legal acumen, but also by functionalism as the dominant background theory of international organizations and international cooperation of the time. Functionalism complemented the institutional culture of the Bank in particular ways. Its central tenet is the assumption of an apolitical, technocratic nature of most international organizations.<sup>67</sup> This aspect corresponded to the institutional culture and self-understanding of Bank as a non-political and economic institution, but might have also corresponded to the hope and rhetoric of non-alignment that was popular in many administrations of the TW. In fact, where Jan Klabbers distinguishes three broad narratives about international organizations (as grease to global capitalism, as instruments of governmentality, or as forces of progress) the World Bank could be an example of each of them.<sup>68</sup>

<sup>63</sup> Sinclair, *To Reform the World* (n 1) 226–28.

<sup>64</sup> See the Introduction chapter of this volume).

<sup>65</sup> See Suzuki, *Regional Development Banks* (n 32); Dann, *Many Faces* (n 57).

<sup>66</sup> See Antonio R Parra, *The History of ICSID* (OUP 2012); Broches, 'International Legal Aspects' (n 62).

<sup>67</sup> Jan Klabbers, 'The EJIL Foreword: "The Transformation of International Organizations Law"' (2015) 26 *European Journal of International Law* 12 (hereafter Klabbers, 'The EJIL Foreword').

<sup>68</sup> *ibid* 16–17.

But functionalism also played into the hands of the Bank in another, perhaps more surprising, way because it has no sensibility for equality and hence for the politically most obvious development of the time: multiplication of states (and growth in membership of the Bank). International organizations generally were based on the assumption of equal participation of all states in their decision making and operation. In this way, they also had a special 'post-colonial' appeal for the newly independent states at the time.<sup>69</sup> In the case of the Bank, however, this logic was suspended and was replaced by the logic of weighted power; in fact, it insulated the Bank against the rise in the number of new states as well as new *member* states. As mentioned, however, a central pillar of functionalism is its principal-agent conception and dominant role of member states,<sup>70</sup> and functionalism as a theory cannot comprehend the hierarchical and oligarchic character of an international organization. How the principal is composed is irrelevant for functionalist thinking. It does not imply anything in case of changing membership (here, the dramatic growth of development country group). Thus, decolonization according to functionalism did not change the principal.

## V. Conclusion

The battle for financial support in the 1950s and 1960s and role of World Bank therein show specific a dynamic: in response to demands for more support and fair participation from Southern governments, the Northern member states of the Bank and Bank management reacted with a move that is reminiscent of the Aikido fighting technique, which uses the opponents attacking energy to defeat the opponent. The demands for financial support were not blocked but taken up and used to fortify the dominance of the North even more. They were also used to place the World Bank as Northern agency at the centre of development thinking, which emerged at the dominant paradigm structuring North–South relations at the time. To that end, different instruments were used: one was rhetoric—to engage and placate opponents; the other was law—instrumental in turning Southern demands into even more dominant techniques. In effect, the Southern contestation of the original institutional basis of the Bank did not lead to a reversal or humbling of the Bank, but rather to a counter-strike. This is particularly interesting from today's perspective, as the Bank is again confronted and under immense pressure, this time from new competition by private markets or Asian-led rivals.

<sup>69</sup> Guy F Sinclair, 'Towards a Postcolonial Genealogy of International Organizations Law' (2018) 31 *Leiden Journal of International Law* 841–69.

<sup>70</sup> Klabbers, 'The EJIL Foreword' (n 67) 11.