Cachet Not Cash: Another Sort of World Bank Group Borrowing

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INTRODUCTION

What are the sources of environmental and social rules that will govern trade and investment in the Americas? This paper examines an unlikely, yet increasingly important source of global standards that is "advancing stealthily, little noticed until now."[1] James P. Cooney, General Manager, Strategic Issues at Placer Dome Inc., explains:

> But what if I told you that a global regulatory system that is much more consistent, comprehensive and compelling than this current patchwork of initiatives is about to descend on international business? On the horizon and approaching swiftly is a set of global standards that will dictate to corporations their environmental approval and management systems, their relations with indigenous peoples, their impacts on forests, the resettlement of populations, the preservation of culture, the protection of biodiversity, the management of community health and safety issues, and respect for the rights of labour, as well as many other specific areas of corporate impact on the environment and on society.[2]

After such a passionate build-up, it is rather deflating to hear that the new source of global rules to which Mr. Cooney refers is a set of informal workplace policy guidelines established by the World Bank for internal use by Bank staff. The World Bank standards are a set of social and environmental guidelines created to provide guidance to staff within the World Bank Group. They are described as "safeguards", "guidelines" and "international rules", without any distinction between these labels. The World Bank standards were not created for the purpose of providing global rules for business on social and environmental issues. Rather, they emerged as policy documents created to provide guidance to Bank Group staff. Initially not publicly available, they are now

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* Assistant Professor, Faculty of Law, University of British Columbia. I thank Laura Track for her superb research assistance.

1. James P. Cooney, *Transformation Coming: Ready or Not! How the Global Mining Industry is Changing the Rules for International Business* (Nov. 25, 2004) (Speech Presented at the Alliance for Capitalizing on Change, Edmonton, Canada, transcript available at http://www.placerdome.com/newsroom/presentations/nov2504_jpc.htm).

2. *Id.*

identified as an emerging and potent source of *de facto* global rules. This paper explores the unlikely rise in prominence of the World Bank Group's social and environmental guidelines and documents claims of their increasingly widespread adoption by corporations, public and private financial institutions, governments and export credit agencies.[3]

The fact that corporations and private banks are borrowing World Bank standards has been noted anecdotally, but the extent of this practice and its implications have largely escaped the scrutiny of non-governmental organizations (NGOs) and academics.[4] This example of private borrowing of public standards is intriguing not only for the consequences for individual projects. In highlighting the importance of an unconventional source of global environmental norms, this study focuses attention on unusual suspects in global environmental governance and the increasing attraction of international standards in an era of "regulation by information."[5]

Discussion of international standards, especially so called voluntary standards, tends to be dominated by the issues of compliance and enforcement. How can such standards be enforced? Does the World Bank in practice implement the standards it preaches? Are claims of corporate compliance with World Bank standards anything more than publicity exercises? Academics and activists alike thus direct much of their scrutiny to the issue of whether or not the World Bank actually applies these rules in practice.[6] Questions of compliance are critical,

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3. The World Bank Group includes the World Bank (IBRD and IDA) and its private sector-oriented affiliate the International Finance Corporation (IFC). *See generally* http://web.worldbank.org/WBSITE/EXTERNAL/EXTABOUTUS/0,,contentMDK:20103870~menuPK:1697011~pagePK:51123644~piPK:329829~theSitePK:29708,00.html.

4. A recent Note that specifically addresses the role of the World Bank's operational policies as "de facto global standards" in the area of indigenous rights is Galit A. Sarfaty, *The World Bank and the Internalization of Indigenous Rights Norms*, 114 YALE L.J. 1791, 1792 (2005).

5. See Anne-Marie Slaughter, *Global Government Networks, Global Information Agencies, and Disaggregated Democracy*, 24 MICH. J. INT'L L. 1041, 1059 (2003) (discussing the concept of regulation by information in the context of the European Community and the North American Commission on Environmental Cooperation).

6. *See, e.g.*, Leslie Valentine, Environmental Defense, *The World Bank at a Crossroads: The Case for Reform* (Sept. 2002), http://www.environmentaldefense.org/article.cfm?contentid=2322 ("But what are supposed to be minimum environmental and social standards in World Bank projects have unfortunately become little more than lofty goals. World Bank projects are notoriously noncompliant with these minimum standards, and this fact has been documented by independent agencies as well as the Bank itself."); Natalie Laura

but they must not overshadow all other questions.

In this paper I look beyond questions of compliance to unveil some of the other questions that are generally not being asked: Why are private corporations and banks turning to the World Bank Group's operational policies as a source of norms articulating acceptable behaviour? How are these standards created? How participatory is the process of their articulation? Why are rules created as workplace guidance documents now regarded as sources of global rules? Why do actors ranging from global corporations to national export credit agencies feel compelled to associate themselves with Bank Group standards? What exactly do these standards represent—best practices or minimum thresholds? Are they sufficiently precise to have any real legal meaning or rather, do they tend to obfuscate the environmental and social impacts of projects? What is the significance of these developments, for international financial institutions, corporations, the Bank Group, civil society and project stakeholders? Why is this unconventional form of global environmental rulemaking happening largely outside state structures and involving primarily non-state actors?

Part I of this paper explores the pressures on corporations, private banks and export credit agencies to find and comply with acceptable global standards. Part II explores the World Bank Group's standards as a source of norms. The third part of this paper articulates how the World Bank shapes global practices with a detailed examination of the claims of adoption of these standards by financial institutions, export credit agencies, and corporations. The conclusion questions the implications of these practices.

I. THE SEARCH FOR STANDARDS

The search for global standards to which to hold international business to account comes from a variety of directions—as conditions

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Bridgeman, *World Bank Reform in the "Post Policy" Era*, 13 GEO. INT'L ENVTL. L. REV. 1013, 1014 (2001) (discussing how the Bank's incentive structure of rewarding staff for the volume of loans approved rather than the quality of the loans is an impediment to successful implementation of the social and environmental standards). This question was also addressed by the Operations Evaluation Department of the Bank. Andres Liebenthal, *Promoting Environmental Sustainability in Development: An Evaluation of the World Bank's Performance*, (The World Bank, 2002) (noting that the policies themselves are "generally satisfactory" but the "implementation of environmental assessments has been mixed").

of financing from financial institutions, as a result of industry peer pressure, and due to stakeholder and local community expectations and NGO and consumer pressure. It can also be explained by the forces which are often described as "corporate social responsibility," forces which are:

> changing the social context in which companies operate in some consumer markets, are changing the way companies think about their strategic challenges, are changing the institutional investor context in some important markets (particularly London), and are changing the norms of appropriate industry action with respect to important questions such as environmental protection, security arrangements for pipelines and plants, and financial arrangements with host countries.[7]

The potential social and environmental impacts of projects attracting foreign investment within the Hemisphere have been highlighted by journalists, academics and NGOs.[8] They are the very focus of this Conference. Some of the horror stories of social and environmental devastation wreaked by foreign investment and reported in the media have had a significant impact on public opinion, and as a result, are influencing the way that money is lent.[9] Private and public banks have discovered the competitive threats, as well as opportunities, created by environmentalism.[10] Many companies are also increasingly conscious of the need to be *perceived* as socially and environmentally responsible. Corporations are thus quick to denounce other companies which do not live up to accepted standards[11] and keen to advertise their own

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7. Cynthia A. Williams, *Oil and International Law: The Geopolitical Significance of Petroleum Corporations, Civil Society Initiatives and "Soft Law" in the Oil and Gas Industry*, 36 N.Y.U. J. INT'L L & POL. 463-64 (2004).

8. *See, e.g.*, Ian A. Bowles et al., *The Environmental Impacts of IFC Lending and Proposals for Reform: A Case Study of Conservation and Oil Development in the Guatemalan Peten*, 29 ENVTL. L. 103 (1999); Judith Kimerling, *Rio +10: Indigenous Peoples, Transnational Corporations and Sustainable Development in Amazonia*, 27 COLUM. J. ENVTL. L. 523 (2002) (case study of Occidental Petroleum in Ecuador).

9. Russell S. Frye, *The Role of Private Banks in Promoting Sustainable Development, from Outside Counsel's Perspective*, 29 LAW & POL'Y INT'L BUS. 481, 498 (1998).

10. *See* William L. Thomas, *The Green Nexus: Financiers and Sustainable Development*, 13 GEO. INT'L ENVTL. L. REV. 899 (2001).

11. Thus it was Canadian mining companies rather than environmental NGOs who were most critical of the practices of Chinese coal trucks violating Mongolia's environmental standards. *See* Geoffrey York, *Road Rash of the Mongolian Hinterland*, GLOBE & MAIL, August 22, 2005, at A1.

credentials.[12] Peer pressure is put on companies who deviate from industry norms. Nowhere is this more evident than in the global mining industry, where the distance between leaders and laggards is increasing as the "self-styled leading companies" publicly embrace sustainable development initiatives.[13]

Public and private institutions adopting World Bank standards are not necessarily doing so from what they perceive is a position of choice. Junior mining companies suggest they are under increasing pressure from senior downstream companies, regulators, financiers and civil society to consider World Bank standards, and consideration of these standards is not always done "willingly."[14] A story in *Canadian Business* magazine reveals how Manhattan, a Canadian mining company, views these issues in the context of a gold find underneath the town of Tambo Grande in Peru:

> It is still possible to get permits for a mine virtually without consulting local people, [Thompson, the consultant Manhattan hired to deal with local NGOs adds], 'but the Canadians know this isn't socially acceptable. They would have every NGO in the world - not to mention shareholders – on their backs.' Granted, Manhattan still has the right to appropriate land for which it has mineral concessions. But the politics of mineral exploitation have changed in Peru, Thompson says: 'Now it's a process of negotiation. Manhattan has adopted World Bank standards for consultation, but the inevitable consequence of that is you have to deal with all the social and environmental issues in a very public way.'[15]

The real and perceived risks posed by projects with ill-considered social and environmental implications explain in part why lenders are increasingly cautious about the environmental "creditworthiness" of

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12. *See, e.g.*, Royal Dutch/ Shell's promotion of its "Biodiversity Standard" and "Environmental Minimum Standards," *Commitments, Policies, and Standards*, http://www.shell.com/home/Framework?siteId=royal-en&FC2=&FC3=/royal-en/html/iwgen/environment_and_society/commitment_policies_standards/dir_policies_standards.html (last visited October 16, 2005).

13. Cooney, *supra* note 1.

14. Richard Everett & Andrew Gilboy, Associates for Global Change, *Impact of the World Bank Group's Social and Environmental Policies on Extractive Companies and Financial Institutions*, iv (June 2003) (Submission to the World Bank Extractive Industries Review Secretariat), http://iris36.worldbank.org/domdoc/PRD/Other/PRDDContainer.nsf/All+Documents/85256D240074B56385256FF70047B741/$File/volume6everett.pdf.

15. Charles Montgomery, *City of Gold*, CANADIAN BUSINESS, Feb. 5, 2001, 62, at 64-66.

project sponsor borrowers, and why they are attracted to international standards as a source for screening environmental and social behaviour.[16] Bankers realize that regardless of actual environmental exposure, being perceived as funding environmentally destructive projects is bad for business.[17]

Documented standards provide lenders with an easy "check the box" way of satisfying these concerns. For example, by deciding only to finance forestry projects that have the approval of the Sustainable Forestry Council, lenders can rely on external standards to provide comfort for projects with social and environmental risks.[18] Certain private banks thus make reference to the World Bank operational policies explicitly in their underwriting policies.[19] This is by no means because the World Bank standards are the "best" or most appropriate standards for financial institutions to follow. Rather, financial institutions adopt the World Bank Group's standards in part as a default solution because of a lack of alternatives. These institutions have indicated they would prefer better tools for quantifying social risk.[20]

There is a legislative void at the international level when it comes to articulating standards of acceptable social and environmental behaviour for private and public actors. For those who feel compelled to align themselves with some sort of international standards, the World Bank standards fill this void, and these standards offer a safe haven for companies and government regulators alike. "The World Bank provides guidance, saves transaction costs, and offers the luxury of security. The value of such guidance rises concomitantly with both uncertainty and complexity, circumstances likely to arise more and more frequently in a world of complex rules and technical regulations."[21]

The context in which corporations, financial institutions and export credit agencies search to align themselves with sources of international

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16. For a consideration of environmental due diligence from the perspective of a bank's outside counsel, see Frye, *supra* note 9.

17. Frye, *supra* note 9, at 490.

18. *Id.* at 497.

19. *See, e.g.*, Bank of America, *Global Corporate & Investment Banking Credit Policy Guide* (Dec. 2002), http://www.bankofamerica.com/environment/2000epr/section2.html#top (last visited October 16, 2005).

20. Everett & Gilboy, *supra* note 14, at v.

21. Anne-Marie Slaughter, *Sovereignty and Power in a Networked World Order*, 40 STAN. J. INT'L L. 283, 300 (2004).

credibility when it comes to social and environmental impacts is key. Cynthia Williams describes this context as the "new face of regulation," where "in today's networked, information-driven world, ... one activist with a computer in Bangladesh can inspire a stock sell-off of one of the world's largest companies in London or New York."[22] She highlights the role of information in creating this new regulatory context.[23] This work complements that of Anne-Marie Slaughter, who describes how the "basic paradigm for global regulatory processes is the promulgation of performance standards, codes of best practices, and other aspirational models based on compiled comparative information."[24]

Tools for activists in an era of "regulation by information" thus include a range of shaming devices. Corporate and governmental actors alike defend themselves by wrapping themselves in the cloak of environmental and social respectability that the World Bank standards represent. Reputation becomes the battleground. Even as many project critics attack the World Bank standards as inadequate, and certainly inadequately implemented, they are still widely regarded as "a minimum floor that any environmentally and socially sensitive project should meet."[25]

These insights are consistent with the work of Neil Gunningham, Robert Kagan and Dorothy Thornton, who explore the concept of a "social license to operate" in the context of extractive industries.[26] Outside the parameters of what might be considered binding law, companies are competing for access to the most lucrative natural resource finds and need to secure a "license to operate" much wider than the concept of legal permission to operate a project.[27] Professors Gunningham, Kagan, and Thornton examine the relationship between social pressures and environmental performance in a study of pulp and paper mills. They report how many mill managers expressed a need to satisfy not only a regulatory license but also a "social license" from the

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22. Williams, *supra* note 7, at 463-64.

23. *See id.*

24. Slaughter, *supra* note 5, at 1065.

25. Friends of the Earth et al., *Memorandum on Camisea Project Violations of World Bank Safeguard Policies* (Oct. 17, 2002), http://www.bicusa.org/bicusa/issues/misc_resources/338.php.

26. Neil Gunningham et al., SHADES OF GREEN: BUSINESS, REGULATION AND ENVIRONMENT 35-37 (2003).

27. *Id.*

community. The manager of one mill thus "told us that the sanctions it feared the most . . . were not legal but informal sanctions imposed by the public and the media, and hence it was motivated less by avoiding regulatory sanctions per se as 'anything that could give you a bad name.'"[28]

These reputational factors are particularly acute for the corporations examined in the final section of this study – large, highly visible, often transnational corporations which are increasingly conscious of the need to manage their relationships and maintain their credibility with a wide range of stakeholders.[29] For them, the World Bank standards have become a sort of social or eco-badge to wear. The World Bank Group, even though it attracts considerable criticism for its own environmental and social record, operates as a moral guarantor of a project's compliance with some minimum level of human rights and environmental standards.[30] Thus, Exxon, in the case of the Chad-Cameroon pipeline, publicly declared that it was unwilling to go ahead with the project without World Bank Group participation. [31] Westdeutsche Landesbank, in the context of the OCP Pipeline project in Ecuador, claimed compliance with World Bank standards to be a "prerequisite for any financial involvement . . . in the project."[32]

While often left unchallenged, the claims of compliance with World Bank standards made in these two pipeline projects were contested and project sponsors and financiers presented with detailed reports of alleged non-compliance. The high profile nature of these two projects likely explains in part this scrutiny, but many of those who claim to adhere to World Bank standards are never held to account.

The publicity value of corporate commitment to World Bank standards is highlighted by the website of CIC Resources Corporation,

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28. Robert Kagan et al., *Explaining Environmental Performance: How Does Regulation Matter?*, 37 LAW & SOC'Y REVIEW 51, 69 (2003).

29. Gunningham, *supra* note 26.

30. *See* Online NewsHour, *Sharing the Wealth*, http://www.pbs.org/newshour/bb/africa/july-dec02/chad_7-11.html (last visited Oct. 19, 2005).

31. For a discussion of the World Bank's role in the Chad-Cameroon oil project *see*, Genoveva Hernandez Uriz, *To Lend or Not to Lend: Oil, Human Rights and the World Bank's Internal Contradictions*, 14 HARV. HUM. RTS. J. 197 (2001).

32. *See* Amazon Watch, Acción Ecológica, and Rainforest Action Network, *Ecuador: Environmentalists Continue Latest Occupation in Mindo to Block Pipeline Construction* (Jan. 9, 2002), http://www.ran.org/news/newsitem.php?id=474 (further discussion of this project in Part III of this paper).

a Chinese mineral company, which until recently advertised its "adoption" of "World Bank Standards" in a colourful banner across its website with the words: "We adopt World Bank Standards for Environmental & Mining Practices."[33] In the "Environment Statement" of the website the claim was repeated, "We adopt the highest environmental standards that exist namely 'World Bank Standard.'"[34] The website was changed in August of 2005 to state that the company will "follow PR China laws and policy" with regard to environmental and social responsibility and "adopt international laws and practices as a start position of compliance."[35] A curious change. Was the claim of adherence to World Bank standards not attracting enough website hits?

II. THE SOURCE: THE WORLD BANK GROUP STANDARDS

References to the "World Bank standards" are prevalent without any further definition or clarification of exactly what standards are being referenced. The phrases "World Bank standards," "World Bank safeguards" and "World Bank guidelines" are used interchangeably, and generally refer to the collectivity of policies and guidelines by which the World Bank Group gives guidance on environmental and social issues.[36] These include the World Bank's Pollution Prevention and Abatement Handbook (PPAH), the World Bank's Safeguard Policies, the International Finance Corporation 's (IFC's) Environmental, Health and Safety Guidelines and the IFC's Handbook for Preparing a Resettlement Action Plan.[37] The relevant Safeguard Policies address both environmental issues (Natural Habitats, Forestry, Pest Management, Safety of

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33. CIC Mining Resources Ltd., www.cicresources.com (last visited July 19, 2005).

34. *Id.*

35. *Id.*

36. *See* The World Bank Group, *Safeguard Policies*, http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/EXTPOLICIES/EXTSAFEPOL/O,,menuPK:58441~pagePK:64168427~piPK:64168435~theSITEPK:584435,00.html (last visited Oct. 19, 2005).

37. *Id.;* The World Bank Group, *Pollution Prevention and Abatement Handbook 1998: Toward Cleaner Production*, (1999), *http://www-wds.worldbank.org/servlet/WDS_IBank_Servlet?pcont=details&eid=000094946_99040905052283* (last visited March 13, 2006); International Finance Corporation, *The IFC's Environmental, Health and Safety Guidelines*, http://www.ifc.org/ifcext/enviro.nsf/Content/EnvironmentalGuidelines (last visited Oct. 19, 2005); International Finance Corporation, *IFC's Handbook for Preparing a Resettlement Action Plan*, http://www.ifc.org/ifcest/enviro.nsf/AttachmentsByTitle/p_resettle/$FILE/ResettlementHandbook.PDF (last visited Oct. 19, 2005).

Dams, International Waterways and Disputed Areas) and social issues (Involuntary Resettlement, Indigenous Peoples, Cultural Property, Forced Labor and Harmful Child Labor).[38]

The exact origins and evolution of each of these standards is not well known. The limited history that has been written reveals that these operational policies were initially created to provide internal guidance to Bank staffers in dealing with environmental and social issues. They were not written for external use and originally were not publicly available, although now these documents are publicly accessible and available online. [39] Their creation was intended to foster a harmonized approach within the Bank Group itself, which would be known by all staff.[40] These standards were not originally envisioned as fashioning global rules to harmonize the practices of private banks or corporations, although members of the Bank Group now acknowledge that the standards are becoming global norms.[41]

The group of documents and policies referred to as "World Bank Operational Standards" encompasses a range of documents of varying legal status including 'Operational Policies,' 'Bank Procedures,' and 'Operational Directives,' as well as operational statements and *ad hoc* circulars distributed to staff.[42] The Bank has been converting its Operational Directives to a series of Operational Policies, Bank Procedures and Good Practices.[43]

The Operational Standards were originally established as aspirational targets, but have increasingly developed a mandatory status.[44]

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38. The World Bank Group, *supra* note 35.

39. World Bank, *IBRD & IDA: Working for a World Free of Poverty*, www.worldbank.org.

40. Charles E. Di Leva, *Sustainable Development and the World Bank's Millennium Development Goals*, 19 NAT. RESOURCES & ENV'T 13, 18 (2004).

41. "The Guidelines have become globally applied references for private sector development with their use extending well beyond World Bank Group operations to a diverse external community, [including] other international financial institutions, regulators, industry, academics, and commercial banks, including the international banks that have recently adopted the Equator Principles." International Finance Corporation, *IFC Policy Review, EHS Guidelines Update*, http://www.ifc.org/ifcext/policyreview.nsf/Content/EHSGuidelinesUpdate (last visited Sept. 26, 2005).

42. Laurence Boisson de Chazournes, *Policy Guidance and Compliance: The World Bank Operational Standards*, *in* COMMITMENT AND COMPLIANCE: THE ROLE OF NON-BINDING NORMS IN THE INTERNATIONAL LEGAL SYSTEM 281, 283 (Dinah Shelton ed., 2000).

43. *Id.* at 285.

44. *Id.* at 283.

Operational Policies and Bank Procedures are regarded as binding on Bank staff while Good Practices are not. The contractual inclusion of these policies in agreements signed between the Bank and borrowers creates further legal obligations of compliance. The standards address a number of environmental and social issues, some very generally, and others with varying degrees of specificity.

Corporate claims of adherence to "World Bank standards" will always be challenging to substantiate because there is no unambiguous meaning as to what constitute these World Bank standards. Such claims may be impossibly vague because of the range of possible sources being referenced. Not all institutions within the Bank Group apply identical standards. The IFC and MIGA in particular use their own policies, although they do apply IBRD policies in the absence of their own safeguards in certain areas.[45]

At present, the IFC is in the process of reviewing its Safeguard Policies, Policy on Disclosure of Information, and Environmental, Health & Safety Guidelines including the *Pollution Prevention and Abatement Handbook*.[46] Review and revision of substantive provisions, such as the allowable limits on emissions and effluents in the *Pollution Prevention and Abatement Handbook* reveals the evolving nature of these standards. New standards are also being created.[47] For example, the policy review in which the IFC is currently engaged incorporates consideration of new Environmental Health and Safety Guidelines for Precious Minerals Mining.[48]

The IFC's updated Safeguard Policies are to be re-cast under the title of "IFC Policy and Performance Standards on Social and Environmental Sustainability."[49] The nine Performance Standards to be included suggest the range of social and environmental issues addressed: (1)

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45. *See* International Finance Corporation, *IFC Policies and Guidelines Update* (last visited Sept. 26, 2005), http://www.ifc.org/ifcext/policyreview.nsf/Content/SafeguardPolicies Update; *see also* Multilateral Investment Guarantee Agency, *MIGA Environmental and Disclosure Policies* (last visited Sept. 26, 2003), http://www.miga.org/screens/policies/ safeguard/background.htm.

46. *Id.*

47. *Id.*

48. International Finance Corporation, *IFC Environmental Health and Safety Guidelines for Precious Metal Mining* (July 2004), http://www.ifc.org/ifcext/enviro.nsf/ AttachmentsByTitle/gui_draftmining/$FILE/PMM_Guidelines_DRAFT_019_Final+for+Co mments_.pdf (published in draft form).

49. *IFC Policies and Guidelines Update*, *supra* note 44.

social and environmental assessment; (2) labor and working conditions; (3) pollution prevention and abatement; (4) community health and safety; (5) land acquisition and involuntary resettlement; (6) conservation of biodiversity and sustainable natural resource management; (7) indigenous peoples and natural resource dependent communities; (8) cultural heritage, and (9) social and environmental management systems. This ongoing process of improvement and revision is consistent with the view that these documents are to be revised over time "in light of the accumulated experience."[50] One of the explicit goals of the IFC in updating its Safeguard Policies is to "promote the applicability of the Safeguard Policies to the private sector and support their efforts toward environmental and social sustainability."[51]

The IFC is inviting input into this process, a reflection of the World Bank Group's increasing awareness of the need to consult civil society in its policymaking. Yet the extent to which these policies may be considered as brokered deals, reflecting some sort of consensus both of those within the bank and beyond, is unknown.

To even speak about a "Bank Group approach" to these policies may be problematic in that it ignores the fact that the Bank itself is a location of contested opinions, and there is far from a single Bank approach to these issues.[52] The exact status of these policies within Bank practice is also difficult to confirm. Are they regarded as aspirational goals, *de facto* global minimum standards or something in between? Again, recognising that the Bank is not a monolithic institution, but a site of internal divisions between individuals and departments, there is unlikely to be one answer.

III. FROM INTERNAL RULES TO GLOBAL NORMS: HOW THE WORLD BANK GROUP SHAPES GLOBAL PRACTICES

This section explores claims of the adoption of World Bank Standards by financial institutions, export credit agencies, and

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50. POLLUTION PREVENTION AND ABATEMENT HANDBOOK 1998: Toward Cleaner Production, *supra* note 36.

51. *IFC Policies and Guidelines Update*, *supra* note 44.

52. Sarfaty, *supra* note 4, at 1794 ("In projects affecting indigenous peoples, Bank staff must balance competing interests in deciding whether and when to apply the indigenous people policy and how to implement the policy once it is applied. As a result, actions are continuously contested and renegotiated within the institution itself.").

corporations. These actors and institutions are not the only actors for whom the World Bank standards serve as benchmarks. World Bank Group standards have had a noted impact on states creating national legislation in the social and environmental areas.[53] Other development banks, such as the Asian Development Bank and the Inter-American Development Bank, have used the World Bank's OD 4.20 as a key source in developing their own policies on indigenous peoples.[54] The introduction by the World Bank Group of its Environmental Assessment Policy was also influential in paving the way for the inclusion of an environmental impact assessment requirement as a national instrument in the Rio Declaration on Environment and Development.[55]

A. Norm Setting for Financial Institutions

As part of the Extractive Industry Review at the Bank, a study was commissioned on the impact of World Bank Group social and environmental guidelines on industry practice. This study suggests that World Bank Group operational policies do influence the practices of private financial partners and export credit agencies, which report use of the operational policies as a baseline for their activities.[56] Four of the fifteen financial partners studied, including Australia's Macquarie Bank, Barclays, HVB and venture capital firm Resource Capital Funds, specifically stated that they used World Bank Group guidelines when preparing projects for financing. As noted in the Report, HVB devoted an entire page of its 2001 Sustainability Report to describing its use of "World Bank Standards as Benchmark."[57] There it claims that "[t]he minimum social and ecological standards defined by the World Bank,

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53. *See* Di Leva, *supra* note 40, at 18 ("the application of these policies to bank projects has had a major impact on the development of environmental legislation in dozens of developing countries").

54. Benedict Kingsbury, *Operational Policies of International Institutions as Part of the Law-Making Process: The World Bank and Indigenous Peoples*, *in* THE REALITY ON INTERNATIONAL LAW: ESSAYS IN HONOUR OF IAN BROWNLIE 323, 341 (Guy S. Goodwin-Gill & Stefan Talmon eds., 1999).

55. de Chazournes, *supra* note 42, at 299.

56. Everett & Gilboy, *supra* note 14, at iv.

57. HVB Group, *Sustainability Report 2001* at 26, http://www.hvbgroup.com/system/galleries/download/en/aboutus/HVB_Nachhaltigkeitsbericht_en.pdf#search='HVB%20Sustainability%20REport%202001%20World%20Bank%20Guidelines'.

or where more stringent, domestic legislation, are the decisive benchmarks for project-related loans. This is explicitly stated in the lending policy."[58] HVB goes on to state that its "strict orientation on World Bank standards has several times already resulted in our having to turn down loan requests."[59] An attempt to institutionalize the practice of considering these standards beyond the scope of one or two leading banks can be seen in the creation of the Equator Principles.

B. Case Study of the Equator Principles

On June 4, 2003 ten major commercial banks, along with the International Finance Corporation (IFC), signed up to a new set of guidelines—the "Equator Principles"—designed to promote responsible environmental and social practices in the project finance sector.[60] The documented objectives were to create an industry approach for financial institutions in determining, assessing and managing environmental and social risk in project financing, to help the adopting banks document and manage their risk exposures to environmental and social risks, and to allow them to engage proactively with their stakeholders on environmental and social policy issues.[61]

The origins of the initiative lay in a meeting held in October 2002 in London, where the IFC met with a number of banks to present case studies of their experiences handling environmental risks in project finance. The banks present at that meeting decided to develop an industry-wide framework for addressing social and environmental risks in project finance through the drafting of the Equator Principles. The banks worked with the IFC to formulate the principles, which are based on World Bank and IFC environmental and social policies and guidelines. This collective effort was driven by growing concerns over credit risk and reputation risk due to the banks' involvement in financing large projects, principally large oil and gas pipelines in environmentally sensitive areas, and hydroelectric dams causing widespread social disruption. The banks hoped to create a common

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58. *Id.*

59. *Id.*

60. The full text (with exhibits) of the Equator Principles is available at http://www.equator-principles.com.

61. *Id.*

environmental risk assessment framework before a number of large controversial projects hit the market (notably the Camisea pipeline in Peru, the Baku-Tblisi-Ceylon pipeline, and the Bujagali Dam project).

All of the banks signing the Equator Principles have been the subjects of NGO advocacy campaigns as a result of their investments in projects viewed as environmentally and socially destructive. For private financial institutions, attracting the scrutiny of environmental groups is a relatively recent experience. Environmentalist campaigns traditionally targeted public project sponsors and international institutions such as the IMF and World Bank. But this changed with international advocacy group campaigns targeting commercial banks' decisions to fund controversial projects such as the Three Gorges Dam in China. Over 100 advocacy groups signed the Colleveccio Declaration at the 2003 World Economic Forum in Davos, which called on financial institutions to implement more socially and environmentally responsible lending policies. In the words of Jules Peck, WWF's Global Policy Advisor, "The Equator Principles are proof that banks are feeling the heat from environmental groups worldwide."[62]

1. Design of the Equator Principles

The Equator Principles apply to new projects with a total capital cost of US $50 million or more,[63] and create a common framework which allows individual banks to implement their own environmental and social procedures and standards consistent with the Principles.[64] By becoming a signatory to the Equator Principles, a bank commits not to loan to projects where the borrower is unable or unwilling "to comply with [the bank's] environmental and social policies and processes."[65] The banks also agree to include covenants in loan conditions to ensure that if environmental and social management plans are not followed and problems not addressed, the banks can declare the borrowers in default.[66]

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62. WWF-UK, *Banks Adopt Environmental Guidelines - But Are They Enough?* (June 5, 2003), http:www.wwf.org.uk/News/n_0000000905.asp.

63. Equator Principle, *supra* note 59, ¶ 9.

64. *Id.*

65. *Id.* at preamble.

66. *Id.* ¶ 8.

The Equator Principles introduce a common terminology in categorizing projects into high, medium and low environmental and social risk (A, B, and C categories), based on the IFC's categorization process.[67] The Principles themselves expressly incorporate a number of World Bank Group environmental and social policies and guidelines, including the IFC's Safeguard Policies and the Environmental Health and Safety Guidelines and the World Bank Pollution Prevention and Abatement Guidelines.[68] These guidelines were viewed in the drafting process as the nearest thing to an internationally accepted standard of social and environmental responsibility.The Equator Principles also incorporate by reference the IFC Industry Specific Guidelines.[69]

The fast-track process of drafting the Equator Principles prevented meaningful input from stakeholders or even an in-depth industry review of the environmental and social impacts of project finance, important aspects of process in the minds of many critics. One explanation given for the fast-track time frame was the growing pressure on Citigroup from Rainforest Action Network's (RAN's) campaign targeting the bank for its role in financing rainforest destruction, climate change and the disruption of the lives of indigenous peoples.[70] Citigroup used its launch of the Equator Principles to evidence its commitment to environmental issues and negotiated a 'ceasefire' with RAN to pre-empt RAN's introduction of a number of shareholder resolutions on environmental policies at Citigroup's 2003 Annual General Meeting.[71]

NGOs are maintaining a watchdog role over the implementation of the Principles. For example, in the case of the Baku-Tbilisi-Ceyhan pipeline, which was the first Category A project to receive financing from Equator Principles adoptees, the NGO critics of the project documented 127 violations of the IFC Policies on environmental assessment, natural habitats, indigenous peoples, involuntary resettlement and

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67. *Id.* ¶¶ 1-2.

68. *Id.* ¶ 3.

69. *Id.* exhibit III.

70. *See* Rainforest Action Network, *RAN and Citigroup Call Ceasefire*, (April 15, 2003), http://www.ran.org/news/newsitem.php?id=669&area=home%20%20.

71. *See* Rainforest Action Network, *First-Ever Banking Principles Won't Protect Environment or Human Rights* (June 3, 2003), http://www.ran.org/news/newsitem.php?id=706 &area=home.

cultural property.[72] The IFC disagreed with this analysis, and in a response to the NGO report, stated that "after careful review of all comments received IFC has determined that the environmental and social documentation is compliant with our safeguard policies, procedures and guidelines."[73]

2. Potential for Impact

According to one analysis, the 23 banks that adopted the Equator Principles in 2003 arranged 55 billion dollars of project loans for that year, representing 75% of the project loan market.[74] The significant share of the global project finance market these banks represent means that arranging and underwriting banks will have to think seriously about incorporating the guidelines in their loans to achieve successful syndications. Participating banks are betting that these principles will become the industry standard in a few years, with the result that they won't lose business to competitors willing to finance projects that signatories now avoid.

Any substantive change the Equator Principles bring about in influencing which projects are funded, and the process that borrowers must follow, depends on the manner in which individual banks give effect to these guidelines and enforce them against borrowers.[75] The guidelines may not add to the substantive environmental and social requirements placed on borrowers operating in certain countries, but may impose additional hurdles for emerging markets. This is particularly so for the banks' public consultation requirements, which may go further than local law.

The absence of accountability or disclosure mechanisms means that it may be impossible to ever evaluate the impact of the Equator

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72. Baku-Ceyhan Campaign, *Evaluation of the Compliance of the Baku-Tbilisi-Ceyhan (BTC) Pipeline with the Equator Principles* (Oct. 2003), http://www.bakuceyhan.org.uk/publications/Equator_Principles.pdf.

73. *IFC Response to Comments Received During 120 Day Public Comment Period for BTC Pipeline* (Oct. 27, 2003), http://www.ifc.org/ifcext/btc.nsf/AttachmentsByTitle/ESIAPublicCommentsResponse/$FILE/BTC+-+IFC+Reply+to+comments.pdf#search='bakuceyhan%20pipeline%20IFC%20Response%20to%20Comments%20Received%20During%20120%20Day%20Comment%20Period'.

74. Study conducted by Dealogic, http://www.ifc.org/ifcext/equatorprinciples.nsf/Content/EquatorNews.

75. Campaign, *supra* note 71, at 22.

Principles.[76] Banks won't know the extent to which, if any, the Principles are being implemented by their peers, and the public may know no more than at present. To some extent, banks may be able to keep tabs on each other through shared review processes in syndications, but the absence of globally consistent financing practices within some banks (and the lack of disclosure where such practices exist) raises real questions about implementation of these Principles in a comprehensive manner even within individual banks.

As one collective NGO analysis of the Principles notes, much depends on the resources banks will put into implementing the Principles. Some NGOs fear that the Equator Principles will be limiting, and will prevent or delay the adoption of best practice sector standards such as the World Commission on Dams guidelines, or the forest policies adopted by ABN-Amro.[77] They have called on the drafting banks to broaden their discussions beyond project finance to other banking areas, and to embrace best practice standards in a multilateral forum, working with the NGOs that want to be part of this process.

Rather than relieve the pressure from environmental groups, NGOs warn that the Equator Principles will refocus attention on the practices of the signatory banks: "all voluntary CSR initiatives bring with it heightened spotlight from the NGO community, and thus participating institutions risk reputational damage if they are seen to be hypocritical or shirking their responsibilities."[78]

C. Norm Setting for Export Credit Agencies

NGO focus on the financing of projects with significant social and environmental impacts has led to pressure on export credit agencies to adopt environmental and social standards "no less rigorous" than those of the World Bank.[79] World Bank Standards are claimed to be a

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76. BankTrack, *Principles, Profits or Just PR-Equator Anniversary Report* 36-37 (2004).

77. The ABN Amro Forest Investment Policy goes further than the IFC policies by excluding loans for projects in old growth forests.

78. Rainforest Action Network et al., *NGO Collective Analysis of the Equator Principles* at 4, http://www.banktrack.org/fileadmin/user_upload/documents/J_Equator_Principles/Equator_principles/Summary_and_Full_NGO_Analysis.pdf.

79. *See Jakarta Declaration for Reform of Official Export Credit Investment Insurance Agencies*, signed by 347 NGOs from 45 Countries, http://www.eca-watch.org/goals/ jakartadec .html.

"logical choice" for international standards for export credit agencies and in many cases export credit agencies are in some way referencing World Bank standards as sources of guidance.[80]

The Export Credit Group of the Organization for Economic Cooperation and Development (OECD) tackled the issue of environmental and social aspects of projects in 2002, issuing its *Draft Recommendations on Common Approaches on Environment and Officially Supported Credits.*[81] The "Common Approaches" are a set of guidelines directed at minimizing the environmental impact of projects financed by export credit agencies. They are based significantly on World Bank Group operational policies and guidelines[82] and follow the same category A, B, and C criteria for assessing risk. The Common Approaches "have been criticized [by NGOs] for their weakness" when benchmarked against World Bank standards.[83] For example, the Common Approaches provide for compliance with World Bank standards and those of "regional development bank[s] and host countries . . . unless an ECA 'finds it necessary' to apply lower standards."[84]

The World Bank and IFC Safeguard Policies, IFC Environmental, Health, and Safety Guidelines, World Bank's Pollution Prevention and Abatement Handbook (PPAH),[85] and World Bank guidelines for environmental impact assessment[86] are all acknowledged baseline references used by a large number of export credit agencies in classifying projects and evaluating risks.[87] For example, the stated approach of the United States Export-Import Bank is to evaluate

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80. NGO Working Group on the EDC, Halifax Initiative, *Backgrounder on EDC and the Environment,* http://www.halifaxinitiative.org/index.php/All_FactSheets/192.

81. The document titled *Draft Recommendation on Common Approaches on Environment and Officially Supported Credits* is http://www.oecd.org/dataoecd/2/32/2726700 .pdf.

82. A copy of the World Bank Group operational policies and guidelines, also know as the *Guidelines: Procurement under IBRD Loans and IDA Credits,* is available at *http://www.employment.gov.sk/mpsvrsr/internet/home/page_pdf.php?id=1146.*

83. *See, e.g.*, World Rainforest Movement, *The Destructive Role of Export Credit Agencies* (June 2005), http://www.wrm.org.uy/bulletin/95/ECA.html.

84. *Id.*

85. The World Bank Group, *supra* note 37.

86. Documents pertaining to World Bank guidelines are available at, http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/EXTPOLICIES/EXTSAFEPOL/0,,contentMDK:20543912~menuPK:1286357~pagePK:64168445~piPK:64168309~theSitePK:584435,00.html.

87. These World Bank Group sources were used by almost all of the ten export credit agencies studied in the Associates for Global Change report, *supra* note 14, at 51-52.

projects "against host-country environmental guidelines and [the] international guidelines" set out in the World Bank Pollution Prevention and Abatement Handbook and the World Bank Operational Safeguard Policies.[88] The stated policy of the Export-Import Bank where other multilateral development banks are involved in co-financing projects is to use "applicable elements" of the World Bank Guidelines [will be used] to supplement" the guidelines of other multilateral development banks.[89]

The Environmental Review Directive, effective as of May 1, 2002 for Export Development Canada (EDC),[90] borrows its framework for project risk evaluation from the World Bank, but must been viewed as a watered down version of World Bank requirements. While the World Bank/ IFC require consultation with project-affected groups for all Category A projects, the EDC "*expects* that public consultations" will occur for all Category A projects and that "results [will be] taken into account."[91] Again departing from World Bank requirements, for Category A projects, the EDC does not require independent experts unaffiliated with the project to undertake project review.[92]

D. Norm Setting for Corporations

Export credit agencies have collectively adopted elements of the World Bank standards through the OECD Common Approaches and a number of banks have collectively associated themselves with these standards through the Equator Principles.[93] There is no such collective

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88. Export-Import Bank of the United States, *Environmental Procedures and Guidelines*, ¶ 8, http://www.exim.gov/products/policies/environment/envproc.html. Annex A of the Environmental Procedures and Guidelines, for example, summarizes specific quantitative and qualitative information from the PPAH and other World Bank operational policies on an industry-specific basis, and specifically provides that in the case of any conflict between the information in the tables and the World Bank operational policies and PPAH, the World Bank documents prevail.

89. *Id.* ¶ 10.

90. Export Development Canada, *Environmental Review Directive*, ¶ 9 (May 1, 2002), http://www.edc.ca/corpinfo/csr/environment/environmental_review_directive_e.pdf.

91. *Id.* ¶ 9.

92. *Compare* World Bank Operational Manual, *Operational Policies*, OP 4.01 at ¶ 4 (Jan. 1999) *with* EDC at ¶ 18.

93. *See* the Equator Principles official website *at* http://www.equator-principles.com for a complete list of institutions that are members to the instrument.

element to corporate claims of compliance with World Bank standards. Rather, corporations make these claims individually, either on a project-specific or company-specific basis.[94] It may be only a matter of time, however, before industry groups decide to align themselves with the Bank standards in a quest for greater social and environmental credibility. Whether this happens will likely be dictated by whether the standards are seen to offer some competitive advantage, whether industry leaders and laggards can agree on a common approach, and whether the World Bank standards are seen as acceptable or unduly onerous commitments for private corporations.

In asking whether corporations see some advantage to claiming to comply with World Bank standards, I examine the claims of 43 companies that in some way assert they are adhering to these social and environmental standards in their projects.[95] Many of these companies

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94. Equator Principles, *supra* note 60, ¶ 9.

95. The companies involved in the specific projects where these claims are made include: Encana (Chadian Pipeline Project), OCP Consortium (Ecuadorian Pipeline Project), CIC Resources (mining projects in China), Manhattan Minerals (Tambo-Grande Project, Peru), Hawaiian Industries Power Corporation (universal statement), Global Alumina (Alumina Refinery in Guinea), SPIE Batignolles (Yusufeli Dam, Turkey), Hunt Oil (Camisea Pipeline, Peru), ABCO S.A. (Cement Production Facility, Dominican Republic), Nam Theun Power Companies (Nam Theun Dam, Laos), Kenmare Resources (Moma Titanium Minerals Project, Mozambique), Siemens AG-led consortium (Power Plant Project in Turkey), Climax (Arimco) Mining Corporation (Didipio mine, Phillipines), Chevron Texaco (Natural Gas Terminal in Baja California, Mexico), ABB Bailey Pte Ltd. (Power Plant, Singapore), South Caucasus Pipeline Co. (Operated by BP) (Azerbaijan Pipleline), Pansea (Cambodian hotel project), WMC Resources Ltd. (now a subsidiary of BHP Billiton) (Coridor Sands Limitada heavy metals mine, Mozambique), Oxiana LTd. (Gold and Copper Mine, Sepon Laos), Meridian Gold (Esquel mine, Argentina), Anglogold Ashanti (Sadiola and yatela mines, Mali), Compañia Minera Anatamina SA (whose shareholders are Falconbridge, BHP, Teck Cominco & Mitsibushi) (copper and zinc mines in Peru), BP (Tangguh mine, Indonesia), Tiomin Resources Inc. (Kwale titanium project, Kenya), Peter Hambro Mining Plc (Podrovskiy Rudnick Mine Project, Russia), Canico Resource Corporation (Onça-Puma Nickel Mine, Brazil), Gabriel Resources Ltd. (Rosia Montana Gold and Silver Mine, Romania), Tiberon Minerals Ltd. (Nui Phao Mine, Vietnam) Cambior Inc. (Omai Gold Mine, Guyana), Centerra Gold Inc. (Kumtor gold mine, Kyrgyzstan), Crystallex International Corporation (Las Cristinas gold mine, Venezuela), Equinox Minerals Ltd. (Lumwana copper mine, Zambia), Gold Reserve Inc. (Brisas mine, Venezuela), First Quantum Minerals Ltd. (general claim), Wheaton River Minerals Ltd. (San Dimas, San Martin and Nukay mines, Mexico), Interoil Corporation (Refinery in Papua New Guinea), Petrobank Energy and Resources Ltd. (oil and gas project in Colombia), BHP Billiton (general claim), Rio Tinto (general claim), Anglo American (Yang quarry, China and Unki Mine, Zimbabwe), Anvil Mining (general claim), Lafayette Mining (Democratic Republic of Congo), Oxus Mining (Amantaytau Oxide Project, Uzbekistan).

are large, often transnational corporations and claim a link with the World Bank standards that transcends a specific project.[96]

In only five of these 43 examples of corporate claims of adherence to World Bank standards was their any direct relationship between the company or project and the Bank group. The Bank standards are clearly having an impact far beyond the scope of projects in which they have a direct financing role. The vast majority of projects where these claims are made are extractive industry projects: 37 of 43 projects being oil, gas or mining projects. Companies choose to advertise their compliance with World Bank standards in different places—the sources of these claims in this research included company websites, security law filings, Annual Reports, press releases and other publicly available sources. All of the projects took place outside North America, Western Europe, and the Antipodes, although a significant majority (35 of 43) of the companies were based in these regions.

Although the question of compliance is not the central question in this examination, it is an important and unavoidable topic. Given the prevalence of corporate claims of adherence with World Bank standards documented here, are these corporations in any measurable way following these standards? Most of the time these corporate claims of compliance with World Bank Standards are left unexamined or unchallenged. In a handful of controversial projects, these claims are openly contested and interpretation of the World Bank standards becomes a battleground. In the case of the OCP (Oleoducto de Crudos Pesados) project in Ecuador, the OCP consortium defended itself against criticisms of the project in part with the claim that "we as a company are following World Bank guidelines."[97]

The lead bank financing the project, Westdeutsche Landesbank (WestLB), also claimed that compliance with World Bank standards was a "prerequisite for any financial involvement . . . in the project."[98]

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96. The Associates for Global Change, *supra* note 14, at iii, also examined corporate practices in the extractive sector but focused on small exploration and production companies. Looking at these small exploration and production companies, the study found that World Bank Group policy impacts were indirect and minimal. Awareness of World Bank Group policies came as part of a "trickle down" effect from large mining companies and their financial backers.

97. Statement by OCP director of environment and community relations, *quoted in* Leslie Jermyn, *Fuelling Disaster*, THIS MAGAZINE, Oct. 2003, http://www.akaitcho.info/press%20releases/this%20magazine%20story.htm.

98. *See* Amazon Watch et al., *supra* note 32.

WestLB confirmed that World Bank Group's social and environmental safeguard policies were contractually stipulated in an agreement between the bank and OCP although there was no World Bank Group involvement in the project.[99] In response to questions raised in the Government and Parliament of North Rhine Westphalia, WestLB specified that the contractual provision mandated that OCP would "lose relevant permits . . . if the Consortium violate[d] either environmental protection guidelines[,] or the standards of the World Bank[,] or the Government of Ecuador."[100] These claims of compliance were challenged by those concerned about project impacts. An independent assessment of the project's compliance with the World Bank's environmental and social policies was compiled by Dr. Robert Goodland, a retired environmental advisor who had worked at the World Bank for 25 years and authored many of the Bank's social and environmental safeguard policies.[101]

Dr. Goodland's report documents the non-compliance of the project with four applicable Bank Group social and environmental policies.[102] He notes the World Bank's "unprecedented" step of publishing an Op Ed in Quito's El Comercio that expressed "profound concern" over OCP's environmental impact[103] and the television appearance of World Bank Group spokesperson, Elena Serrano on German television stating that "we are concerned that our standards are not being complied with, but that our name is misused to justify a project."[104] Dr. Goodland also refers to the content of a June 2002 letter from then World Bank President James Wolfensohn to WestLB CEO Jeurgen Sengera stating that the World Bank Group "cannot be put into a position where it is asked to certify compliance with its [standards] in projects" in which it has no involvement.[105]

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99. Documented in Robert Goodland, *Independent Compliance Assessment of OCP with the World Bank's Environmental and Social Policies* 4 (Sept. 9, 2002), *http*://www.amazonwatch.org/amazon/EC/ocp/reports/ocp_asses_report_0209.pdf.

100. *Id.* at 4 n.3.

101. *Id.* at 2.

102. *Id.* at 4 n.4 lists the pertinent "Environmental and Social Safeguard Policies" at issue: Operational Policy (OP) 4.01: Environmental Assessment Policy, OP 4.04: Natural Habitats Policy, OP 4.12: Involuntary Resettlement Policy and Operational Directive (OD) 4.20: Indigenous Peoples Policy.

103. *Id.* at 5 n.10.

104. Goodland, *supra* note 99, at 5.

105. *Id.*

Dr. Goodland's Report concluded by documenting non-compliance with the four examined World Bank Group social and environmental guidelines. WestLB also hired a consultant, Stone & Webster Engineers Inc., to comprehensively assess the project for compliance with World Bank standards, and the resulting report confirmed such compliance.[106] Measuring compliance will never be a simple, uncontested, check-the-box exercise.

CONCLUSION

This paper documents the prevalence of claims of compliance with World Bank standards emerging from a range of actors including export credit agencies, private financial institutions, and corporations, often with no direct relationship with the World Bank Group. This evidence supports claims that the Bank Group standards are emerging as a source of global "rules" governing the social and environmental impacts of large projects, although the word "rules" in this context must be used cautiously. A range of questions emerges from the fact that the Bank Group guidelines were not created for the purpose to which they are now being put: Are they appropriate sources of global rules? Are they sufficiently precise? Is corporate compliance with these rules to be encouraged or does it allow corporations to hide behind a shield of social and environmental respectability without having to improve performance? What is the role, if any, for national governments?

These questions are not easily answered and no obvious candidates and processes emerge for holding those who claim compliance with these rules to account. The Bank Group has rejected the role of compliance monitor for projects in which it has no involvement. NGOs, acting as the guardians of respect for the World Bank guidelines, have in some high profile projects taken on this role. For Bank projects, the possibility of taking complaints to the World Bank Inspection Panel exists.[107] There is no such court of compliance for claims made by corporations and financial institutions outside the context of Bank Group projects.

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106. *Id.* at 6.

107. *See* Ngaire Woods & Amrita Narlika, *Governance and the Limits of Accountability: the WTO, the IMF, and the World Bank* (UNESCO 2001).

The very emergence of a business climate in which corporations, public and private banks feel compelled to at least claim they are following some internationally agreed-upon standards of acceptable social and environmental conduct is significant. The World Bank standards may not be the obvious, or for many the most acceptable, candidate for this role of emerging global standards. Yet, the frequency of claims of adherence with these standards invites us to investigate how they were created, and how they are still being shaped, and by whom. A strong case can be made for supporting the World Bank Group in constantly strengthening these standards, even if they are contested within the Bank Group, and even if they aren't always enforced.

The environmental and social guidelines established by the World Bank Group have a significant, but as yet unknown influence on actors far beyond the scope of Bank projects. The impact of the standards on insurers and guaranty agencies, for example, remains unexamined. We know these standards are influencing the practices of commercial banks through the *Equator Principles*, but know less about their influence on equity financing. Are mutual funds using these guidelines to evaluate risks associated with large projects? There is a need for research and for critical examination, not only of the substantive content of these social and environmental rules, but of the very processes by which they are created and disseminated in a globalized world.