

ACADÉMIE DE DROIT INTERNATIONAL  
FONDÉE EN 1923 AVEC LE CONCOURS DE LA  
DOTATION CARNEGIE POUR LA PAIX INTERNATIONALE

# RECUEIL DES COURS

COLLECTED COURSES OF THE HAGUE  
ACADEMY OF INTERNATIONAL LAW

2004

*Tome 308 de la collection*



2005

MARTINUS NIJHOFF PUBLISHERS  
Leiden/Boston

## TABLE OF CONTENTS

Chapter I. Institutional overview . . . . .	25
1. Introduction . . . . .	25
2. Scope . . . . .	26
3. Historical background . . . . .	29
(a) IBRD . . . . .	29
(b) Regional MDBs . . . . .	31
4. Purposes and functions . . . . .	33
5. Membership . . . . .	36
6. Structure . . . . .	38
7. Voting . . . . .	42
(a) Weighted voting . . . . .	42
(b) Consensus . . . . .	44
8. Privileges and immunities . . . . .	45
9. Interpretation . . . . .	48
10. Policy formulation . . . . .	53
(a) Special funds . . . . .	54
(b) Participation of civil society . . . . .	56
Chapter II. MDBs as development institutions . . . . .	59
1. Projects and non-projects . . . . .	62
(a) IBRD practice . . . . .	62
(b) IDB practice . . . . .	72
(c) ADB practice . . . . .	79
2. Operational policies . . . . .	81
(a) Procurement . . . . .	83
(b) Economic analysis . . . . .	87
(c) Environment . . . . .	88
(d) Involuntary resettlement . . . . .	93
(e) Indigenous peoples . . . . .	94
(f) Non-navigational use of international waters . . . . .	96
(g) <i>De facto</i> Governments . . . . .	99
(h) Conflict situations . . . . .	102
(i) Disputed territories . . . . .	104
(j) Defaults on external debt, expropriation, breach of contract . . . . .	106
Chapter III. MDBs as development institutions (continued) . . . . .	113
1. Operational Agreements . . . . .	113
(a) IBRD . . . . .	113
(b) Public sector operations of the IDB, the AfDB and the ADB . . . . .	120
(c) Public sector operations of the EBRD . . . . .	121
(d) Private sector operations of IFC, IDB, AfDB, ADB, MIGA, EBRD, IIC . . . . .	123
2. Relevance of domestic law in public sector operations . . . . .	128
(a) Authorization or approval . . . . .	128

(b) Ensuring repayment . . . . .	129
(c) Execution of the project . . . . .	131
3. Loans and grants made out of Trust Funds . . . . .	131
4. Development of standards . . . . .	132
(a) Treatment of foreign investment . . . . .	133
(b) Regional commercial law harmonization: OHADA . . . . .	134
(c) The Equator Principles . . . . .	135
(d) Standards and trade development facility . . . . .	136
(e) Financial standards . . . . .	136
(f) Secured transactions . . . . .	139
(g) Insolvency principles . . . . .	139
5. Accountability . . . . .	141
Chapter IV. MDBs as international organizations . . . . .	151
1. International personality . . . . .	151
2. Implied powers . . . . .	153
3. Treaty interpretation . . . . .	156
4. State succession . . . . .	157
(a) Membership . . . . .	157
(b) Allocation of assets . . . . .	160
(c) Rights and obligations under loan and guarantee agreements . . . . .	161
5. Assistance to non-members . . . . .	162
(a) Soviet Union . . . . .	163
(b) West Bank and Gaza . . . . .	164
(c) Kosovo . . . . .	166
(d) East Timor . . . . .	166
6. Establishment of new institutions . . . . .	168
(a) The CGIAR . . . . .	169
(b) The Onchocerciasis Control Programme . . . . .	170
(c) GEF . . . . .	171
(d) Prototype Carbon Fund . . . . .	175
(e) African Development Fund . . . . .	176
(f) Africa Capacity Building Foundation . . . . .	181
(g) The Joint Vienna Institute (JVI) . . . . .	182
(h) Institutions created as part of the CGIAR . . . . .	184
(i) The energy affiliate . . . . .	185
(j) The "Bank's Bank" . . . . .	185
7. Trust funds . . . . .	189
8. Non-interference in members' political affairs . . . . .	192
9. The United Nations relationship . . . . .	205
(a) The Agreement . . . . .	205
(b) Security Council sanctions . . . . .	209
(c) General Assembly recommendations . . . . .	210
10. Human rights . . . . .	213
Chapter V. MDBs as financial intermediaries . . . . .	219
1. Capital related issues . . . . .	219
(a) Valuation of capital . . . . .	220
(b) Maintenance of Value (MOV) . . . . .	227
(c) Operational limit . . . . .	229
(d) Constituent instrument versus commitments to borrowers and creditors . . . . .	231

*Activities of International Development Banks* 15

2. Financing foreign and local expenditures . . . . .	232
3. Borrowings . . . . .	240
4. Restraint in the exercise of explicit powers . . . . .	242
Conclusion . . . . .	247
Bibliography . . . . .	249