

INTERNATIONAL DEVELOPMENT LAW INTEREST GROUP NEWSLETTER

Dear IDLIG Members and Friends:

We are delighted to send you this first IDLIG newsletter. We hope you will find it informative and that it will inspire you to send materials for our future newsletters.

We also hope that the newsletter will inspire one or more of you to volunteer to become the IDLIG newsletter editor. Our hope is that the newsletter can become a site for a lively exchange of information and views among IDLIG members and friends.

Danny Bradlow and Charles Di Leva

Opening Essay by Jorge Kamine¹: A Reflection on the Call for Legal Practitioners to Assist in Mobilizing Capital for EMDEs²

Towards the end of a rich discussion at the recent ASIL-IDLIG event on the legal tools necessary to mobilize support for development from multilateral development banks (MDB) and the private sector³, Professor Danny Bradlow posed a fundamental question: how can we as legal practitioners help to expand private sector capital flows to emerging markets and developing economies ("EMDEs")? After all, those capital flows consistently supply only a fraction of the need in EMDEs and even that fraction remains concentrated in a handful of countries and regions.⁴ Professor Bradlow's question echoed the core themes in the remarks by Christopher Stephens, Senior Vice President and General Counsel of the World Bank Group, who opened the ASIL-IDLIG event and subsequently expanded on the themes at this year's World Bank Law, Justice and Development Week. The General Counsel called on legal practitioners to use

¹ Jorge is a Partner in the Washington DC office of Willkie Farr & Gallagher and co-chair of its Project Finance & Investment practice. He previously served as an operational lawyer at the World Bank. This article only reflects the views of Jorge writing solely in his individual capacity and not those of Willkie or any other organization or institution with whom he is associated.

² Very special thanks to Lisa Shakhnazaryan, an associate at Willkie Farr & Gallagher, for her detailed research for this article and questions.

³ The event took place on October 29, 2025, titled "Partnering for Progress: Legal Tools to Mobilize MDB and Private Sector Support for Development" was co-hosted by the World Bank Legal Department at World Bank Main Complex, Washington, DC.

⁴ See, e.g., International Energy Agency ("IEA"), Scaling Up Private Finance for Clean Energy in Emerging and Developing Economies (2023), <https://www.iea.org/reports/scaling-up-private-finance-for-clean-energy-in-emerging-and-developing-economies> ("IEA Scaling Private Finance"); IEA, World Energy Investment 2025 (10th ed., June 5, 2025), <https://www.iea.org/reports/world-energy-investment-2025> (citing the need for EMDEs to triple investment flows from USD \$770 billion in 2022 to USD \$2.2 to 2.8 trillion per year by the early 2030s and noting that China accounts for two-thirds of these cash flows and China, India and Brazil collectively accounting for more than three-quarters of those cash flows) ("IEA World Energy Investment"); and International Renewable Energy Agency & Climate Policy Initiative, Global Landscape of Energy Transition Finance 2025 (Nov. 2025), https://www.irena.org/-/media/Files/IRENA/Agency/Publication/2025/Nov/IRENA_CPI_FIN_Global_landscape_energy_transition_finance_2025.pdf.

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International Development Law Interest Group

CO-CHAIRS

Daniel D. Bradlow
&
Charles E. Di Leva

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their legal knowledge, resources and a solutions-oriented mindset to create innovative and more effective products and services that support EMDEs because “[d]eveloping economies today face an investment shortfall of historic proportions” while “[i]nvestment needs are ballooning at an alarming rate”⁵ with an emphasis on infrastructure, private sector engagement and government policies that advance infrastructure and private sector engagement.⁶

So, how should we answer Professor Bradlow’s question and the General Counsel’s call to action, particularly at this moment when the developed world seems to be rapidly moving away from official development assistance (ODA) and foreign aid and more urgently needs greater private capital for development?⁷ As the panelists at the ASIL-IDLIG emphasized, there are significant amounts of private capital available in global markets which could be directed to these investments in EMDEs.⁸ Why is that not happening? If the private capital is generally available, the infrastructure needs are clearly evident and private capital is actively sought by governments, why does the private sector not rush to address these needs? As a practitioner who has been working with the private sector on developing and financing energy and infrastructure projects since the late 1990s, the answer is far more prosaic and straightforward than needing to develop new, clever ideas to raise more capital in the developed world and leverage it in highly structured and complex ways. Projects need to be designed in ways that clearly make them “bankable”.

⁵ Christopher Stephens, From Policy to Results: How Legal Solutions Drive Development Impact, World Bank Blogs, (Oct. 29, 2025), <https://blogs.worldbank.org/en/voices/from-policy-to-results-how-legal-solutions-drive-development-impact>.

⁶ Id.

⁷ See, e.g., Zainab Usman, The End of the Global Aid Industry, Foreign Aff., May 5, 2025, <https://www.foreignaffairs.com/united-states/end-global-aid-industry>. And Adam Tooze, The End of Development, Foreign Policy (Sept. 8, 2025), <https://foreignpolicy.com/2025/09/08/end-of-development-foreign-aid-oda-collapse/>.

⁸ See, e.g., The Murky Economics of the Data Centre Investment Boom, The Economist (Sept. 30, 2025), <https://www.economist.com/business/2025/09/30/the-murky-economics-of-the-data-centre-investment-boom>. See, also., IEA World Energy Investment, *supra* note 4 at 6 (calculating that capital flows to the energy sector are set to rise in 2025 to USD \$3.3 trillion).

The limited pipeline of “bankable” projects and its consequences

In my experience, the challenge is not the availability of capital, but the dearth of well-designed, bankable projects. Meaning, projects that are well-structured based on clear policies and legal frameworks with enabling environments that allow the private investor to easily and effectively evaluate and quantify the returns on investment – whether equity or debt – and the political, legal and economic risks to achieving those returns.⁹ In addition to improving transparency, predictability and reliability in those frameworks, the projects should be scalable and replicable to garner the consistent attention of investors, which also requires knowledge sharing.¹⁰ Governments may seek to promote projects and encourage investment, but the structuring of those projects cannot be uncertain or incomplete and cannot simply shift the shortcomings and risks posed by those gaps to the private sector without discouraging interest and participation.¹¹

⁹ My anecdotal experience is borne by the development literature. More specifically, the main barriers cited are an absence of a medium/long-term vision and commitments, inadequate or missing regulations, lack of competitive and transparent procurement processes, uncreditworthy utility, insufficient and unreliable grid infrastructure, and a poor lending and foreign exchange issues. See Sabine Mathilde Isabelle Cornieti & Claire Marion Nicolas, How to Unlock Pipelines of Bankable Renewable Energy Projects in Emerging Markets and Developing Countries? (World Bank Group, Sustainable Renewables Risk Mitigation Initiative Position Paper, Dec. 2023) <https://documents1.worldbank.org/curated/en/099120623171525006/pdf/P174202cf-52b60e6096b80854984124388.pdf> at 13-16. See, also, Makhtar Diop, Relentless Resolve: Overcoming Barriers to Private Investment in Emerging Markets, LinkedIn (Apr. 17, 2024), <https://www.linkedin.com/pulse/recentless-resolve-overcoming-barriers-private-investment-diop-alkue>; see, also, Philippe Valahu, What’s Needed to Create More Bankable Projects in Least Developed Countries, Illuminem (Oct. 24, 2023), <https://illuminem.com/illuminemvoices/whats-needed-to-create-more-bankable-projects-in-leastdeveloped-countries>.

¹⁰ See World Bank, The Global Infrastructure Facility: Scaling Infrastructure Investment Since 2014 (Apr. 15, 2024), <https://blogs.worldbank.org/en/ppps/the-global-infrastructure-facility--scaling-infrastructure-inves>.

¹¹ Over the years, I have encountered a number of projects with essential, sometimes fatal, gaps that could have been addressed and solved at the outset with better design of the process and procedures. In some cases, even the typical providers of political and credit guarantees were unwilling to provide coverage given the underlying flaws in the design.

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A limited pipeline of bankable projects also reduces the pool of potential investors who are comparing investment opportunities on a global scale. The investment of time and resources required to assess and learn new markets or opportunities can be substantial and potentially require a premium. The attendant risks can make it difficult to convince global investors to undertake that effort unless there are clearly significant, scalable and tangible opportunities, particularly in non-investment grade markets. Investors analyzing these potential opportunities are comparing them to the alternatives in the markets they know, which have more predictable returns, or are simply more understood and follow the broader financial market trends, such as investing in data centers and related infrastructure in developed markets and more established EMDEs.

Moreover, while there are a range of financial instruments designed to deal with political and credit risks arising from investing or lending to EMDEs, my experience has been that (1) there remain material gaps in the availability of coverage for common situations (e.g. nonpayment/credit risk of state-owned entities operating as monopolies), (2) the products are sometimes structured in ways that can make recovery seem complicated by a lengthy process which can diminish the value of the product, and (3) the documentation involved makes it difficult to assess the coverage and risks to recovery. As a result, guarantee and insurance products can be helpful, but cannot serve to correct or resolve the full suite of bankability problems with projects at the scale required. These products must be employed in conjunction with addressing the underlying bankability issues. Lowering the cost of financing alone may not be enough to mobilize capital if there remain doubts about the investment returns and risks cannot be quantified or clearly and easily mitigated.

The potential role for legal practitioners

While lawyers have limited tools to overcome commercial issues that cause projects to not “pencil out”, legal practitioners can play a critical role in doing the work required to identify, analyze and propose holistic solutions to

bankability issues and advise and support host countries in implementing those solutions. There is an essential need for providing knowledge products and advice on the investment climate and framework in EMDEs that do not already attract significant interest from investors. The advice and assistance should include guidance on how best to structure projects and investments to address the risks. This work can be very technical, labor- and time-intensive as it often means doing a deep analysis of existing legal frameworks and commercial ecosystem, understanding the institutional players, political economy and incentives and designing new investment structures and at times new legal, institutional and regulatory frameworks or, at a minimum, changes to the existing systems. Moreover, the political economy may be such that incumbents seek to resist efforts to bring change given that those incumbents have business built around leveraging informational asymmetries and governmental relationships as barriers to entry. As lawyers, we are uniquely suited to contribute to all facets of this work.

While some of that work should come from investors retaining outside counsel, I find capital providers and strategics may not take that step until they determine there are sufficient opportunities to justify the investment of time and money. Consequently, it can be critical for MDBs, NGOs and other organizations to support host governments in undertaking and implementing those solutions. Lawyers can play a vital role in designing investments and institutions structures, sharing knowledge and information, and helping to execute and implement investments. In the end, the answer to Professor Bradlow is that we can all play an essential through our institutions and as a community of development practitioners in addressing these challenges to bankability and thereby increasing capital flows to EMDEs, but we must consider taking the initiative, being more creative and solutions-oriented, and leading our clients and host countries through the often long and difficult process of advancing these efforts in order to contribute to meaningful improvements and change. ■

Events Sponsored by IDLIG:

"Partnering for Progress: Legal Tools to Mobilize MDB and Private Sector Support for Development", co-hosted by ASIL's International Development Law and the International Organizations interest groups and the World Bank's Legal Vice Presidency. The event took place on **Wednesday 29 October 2025**.

A recording of the event is available at: https://www.kaltura.com/index.php/extwidget/preview/partner_id/1930181/ui-conf_id/56595592/entry_id/1_y8bwq8x/embed/dynamic

(This panel discussion stimulated the short contribution by Jorge Kamine above. We encourage other IDLIG members to respond to Jorge)

Updates from IDLIG Members:

From Charles Di Leva:

In accordance with an Approach Paper that was finalized on November 11, 2025, the Boards of the World Bank, IFC and MIGA have commissioned Charles Di Leva, IDLIG co-Chair and Partner of Sustainability Frameworks, LLP, and David Fairman, of the Consensus Building Institute, to co-chair a Task Force to produce options and recommendations regarding potential integration of the WBG's independent accountability mechanisms (IAMS): the Inspection Panel and Dispute Resolution Service, which receive and respond to complaints related to negative impacts of World Bank projects; and the Compliance Advisor/Ombudsman (CAO), which receives and responds to complaints related to the environmental and social (E&S) impacts of IFC and MIGA investments. The link to the Task Force and its activities can be found here: <https://www.worldbank.org/en/about/leadership/brief/task-force-on-integration-of-world-bank-group-accountability-mechanisms>.

From Jeanette Tramhell:

The International Institute for the Unification of Private Law (UNIDROIT) will turn 100 years old in 2026. In preparation for its Centenary, the Institute is taking stock with a view towards its future work program. Seven Workstream Committees have been tasked with analysis of the UNIDROIT instruments and production of a White Paper that will assess the work done so far in order to make recommendations for future work. The Workstream on Sustainable Development is examining UNIDROIT's instruments and work products through the lens of sustainability and the UN Sustainable Development Goals (SDGs). In this context, SDG 16 will be among those under consideration, specifically in relation to promoting the rule of law at national and international levels, and SDG 17 more broadly. As private law instruments are often the means for the actualization of public goals, this is a timely undertaking. Fostering dialogue between organizations in the fields of private and public law will also serve to strengthen the Global Partnership for Sustainable Development.

Publications by IDLIG Members

Books:

Johanna Lorenzo: new book, ***International Financial Institutions and Sustainable Development: Lawmaking and Accountability***, has been published by Cambridge University Press. The work aims to explain how the World Bank and other international financial institutions, through their environmental and social policies, participate in the international lawmaking process on sustainable development and, in turn, how such decision has enabled other non-State actors like project-affected people to likewise become participants by bringing their grievances to independent accountability mechanisms such as the Inspection Panel.

Kishor Upadhyay: *Impact and Influence of International Law and Human Rights Norms on Infrastructure Investments. Select Perspective on the Role, Responsibility and Recourse of Development Actors' (Adroit Publishers, New Delhi 2025, 202 pp).*

While reviewing in parallel the evolutionary processes that reveal the difficulties encountered by international development financing institutions in their governance and countries in their decision-making, the book primarily seeks to help readers talk about and understand the legal aspects of international development machinery. It

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clarifies, through discussions of the different legal instruments issued by international development financing institutions, the nature, patterns, and challenges of collaboration amongst these entities in their financing of infrastructure, as well as their strategies for dealing with a variety of issues of common interests.

The book is designed to be a 'primer' on the practice of international institutions that are involved in promoting, facilitating, and financing international development. Divided into ten chapters, it discusses, first, the nexus of law and development, and continues discussing the human rights, globalization, and sustainable development interposition, the development actors, governance, and instruments, the legal and policy challenges of financing development, including the related administrative, management and relational challenges, the challenges of guaranteeing development rights to sub-sovereigns, and challenges of applying international environmental and social management norms. The subsequent chapters further discuss the approach to overcoming challenges, also touching upon the esoteric theme of happiness, followed by a conclusive segment presenting law as a tool of development, mainly highlighting the multiple contributions lawyers can make.

Rumu Sarkar: 3d edition of **INTERNATIONAL DEVELOPMENT LAW: Rule of Law, Human Rights & Global Finance, (3d ed.) (Springer, 2025).** See <https://link.springer.com/book/10.1007/978-3-031-90105-8>. This textbook was written as a student's edition which includes internet links to Profesor Sarkar's recorded lectures and flashcards (Q&As) for each chapter. The author notes having been informed that this is the first multimedia law title for Springer and anecdotally, the first of its kind in the legal academic publishing world.

If anyone is interested in an institutional subscription for the book with Springer whereby all professors and students in the respective law school or university will have full access to the book, please feel free to contact Paulo Aneiros at paulo.aneiros@springernature.com.

D. Bradlow, D. Hunter, N. Price and V.: Perspectives on Accountability at International Financial Institutions: 30 Years after the Creation of the World Bank Inspection Panel, (Brill, 2025). Contributions are also available at: <https://digitalcommons.wcl.american.edu/accountability-perspectives/>

This collection of essays provides diverse perspectives on the promise, challenges, effectiveness, and future of the World Bank Inspection Panel and similar independent accountability mechanisms (IAMs) found at many multilateral development banks, bilateral financial institutions, United Nations agencies, commercial banks, private companies, and international conservation organizations. These IAMs provide local communities the opportunity to defend their human rights and protect their environment when threatened by internationally financed development decisions. Contributing their perspectives are current and past IAM members and staff, top World Bank lawyers, civil society advocates, and leading academics who have studied the mechanisms since their very beginning.

G. Marceau, H. Gott: International Organization Initiatives: How and Why Organizations Change, (Oxford, 2025). This book can be ordered at <https://global.oup.com/academic/product/international-organization-initiatives-9780197803295?q=9780197803295&cc=ch&lang=en>. Amongst a range of issues, this collection of essays comprising thirty chapters addresses how changes in international organizations come about, how they respond to crises and unforeseen needs of their members, and what roles the secretariats and their heads play in this process. Charles Di Leva and a number of other ASIL members contributed to this book. Di Leva wrote chapter 8: "The World Bank's Evolution Towards Environmental and Social Responsibilities". ■

Other Publications:

Danny Bradlow published a policy brief in November 2025, entitled, “African Debt, Climate Change and the ICJ” with the South African Institute of International Affairs. It argues that:

“The negotiations pertaining to sovereign debt crises place African sovereign debtors on the horns of a dilemma. On the one hand, there is the obvious truism that sovereign debt transactions are based on binding and enforceable contracts. Consequently, it is unsurprising that creditors insist negotiations relating to sovereign debt crises focus primarily on the financial and legal terms of the contract. On the other hand, it has long been recognised that sovereign debt crises are not purely financial or contractual in nature. They are caused by a mix of domestic and international governance, economic, social, political, environmental and cultural factors. Their outcomes also have complex political, social, environmental and cultural implications, as well as financial and economic consequences. Creditors maintain that these considerations

fall within the prerogatives and responsibilities of the sovereign debtor and so should be viewed as outside the scope of their discussions with the debtor. The purpose of this policy brief is to argue that, in light of the climate crisis and evolving views of the environmental and social responsibilities of financial institutions, creditors’ constrained approach to sovereign debtors in crisis is no longer sustainable. It needs to be replaced with a new, more holistic approach that is both operationally and legally feasible. First, the policy brief explains why a narrow focus on financial and legal concerns is no longer a sustainable approach to Africa’s sovereign debt situation. Second, it discusses the implications for sovereign debt negotiations of the recent advisory opinion of the International Court of Justice (ICJ) on the legal obligations of states in dealing with climate change. Finally, it makes some recommendations on what African policymakers and other stakeholders can do to push their creditors to adopt a more holistic approach to sovereign debt restructuring.”