Equator Principles III: A Hard Look at Soft Law

I. INTRODUCTION

On August 15, 2012, the Equator Principles Association released a draft of the much-anticipated Equator Principles III (EP III),[1] the latest edition of the voluntary guidelines for international project finance.[2] First developed in 2003,[3] the Equator Principles (EPs) are designed to provide a voluntary framework to help manage the social and environmental risks associated with international project finance in developing countries.[4] This framework embodies the concept of "soft law," defined as voluntary, informal guidelines that carry no legal obligation.[5] "Equator Principles" refers to the broader theoretical framework that is embodied in specific versions designated as EP I, EP II, and EP III. Since their creation and subsequent revision the EPs have been met with mixed reviews;[6] Equator Principles Financial

1. *Equator Principles III – Draft and Summary of Key Changes*, EQUATOR PRINCIPLES ASS'N, http://www.equator-principles.com/resources/EPIII_PACKAGE.pdf [hereinafter *EP III (Draft)*] (last visited Jan. 30, 2013).

2. The Equator Principles site defines project finance as a "method of funding in which the lender looks primarily to the revenues generated by a single project, both as the source of repayment and as security for the exposure." This type of funding is frequently used in large-scale infrastructure projects in developing countries. *What is Project Finance?*, EQUATOR PRINCIPLES ASS'N, http://www.equator-principles.com/index.php/about-ep/faqs/42-about/frequently-asked-questions/18 (last visited Jan. 30, 2013).

3. *History of the Equator Principles*, EQUATOR PRINCIPLES ASS'N, http://www.equator-principles.com/index.php/about/history-of-the-eps (last visited Jan. 30, 2013).

4. *See* Thomas Papadopoulos, *The Greening of Project Finance: Is This a Viable 'Project'?*, 7 ICFAI U. J. OF BANKING L. 8, 9-12 (2009).

5. *See* Anna Gelpern, *Hard, Soft, and Embedded: Implementing Principles on Promoting Responsible Sovereign Lending and Borrowing*, AMERICAN UNIV., WCL RESEARCH PAPER (Apr. 2012), *available at* http://ssrn.com/abstract=2041027.

6. *Compare Bold Steps Forward*, BANKTRACK 1 (Jan. 10, 2010), http://www.banktrack.org/download/bold_steps_forward/100114_civil_society_call_equator_principles.pdf (expressing disappointment with the current lack of transparency, accountability, and progress in the EPs), *with* Mehrdad Nazari, *Are Equator Principles Still Relevant After Rio+20 and UN PRI?*, PRIZMA (June 17, 2012, 9:09 PM) (stating that the EPs have become the de facto standard for managing social and environmental risks), http://prizmablog.com/2012/06/17/are-equator-principles-still-relevant-after-rio20-and-un-

Institutions (EPFIs)[7] point to increased membership in the EPs[8] as evidence of their impact and efficacy, while non-governmental organizations (NGOs)[9] have lamented the lack of institutional transparency and implementation mechanisms embodied in the EP versions thus far.[10]

The perceived deficiencies, as well as the oft-touted increase in membership, in the EP framework can be traced to the inherent characteristics of soft law itself. Soft law lends itself to the area of project finance because the actors and locales are continually changing. The broadly phrased guidelines of the Equator Principles, as well as the general lack of legal liability, means that banks can tailor the Principles to fit a wide variety of projects operating under a broad swath of different countries' systems of governance or legal regimes.[11] However, it is this easy access and malleability that has led NGOs to decry soft law as lacking the enforcement power necessary to police the financial institutions involved in project finance.[12] The debate about the Equator Principles' efficacy can easily be seen as a proxy for discussion about the effectiveness of soft law in bringing social and environmental awareness to international business transactions. Other soft law

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7. An EPFI is defined as "a financial institution that adopts the Equator Principles (EPs) and is active in Project Finance or Project Finance Advisory Services." To be an "active" member an EPFI must either have EP-related financing currently on the books, or have plans to finance EP-governed projects in the near future. *See What is an Equator Principles Financial Institution?*, EQUATOR PRINCIPLES ASS'N, http://www.equator-principles.com/index.php/about-ep/faqs/42-about/frequently-asked-questions/59 (last visited Jan. 27, 2013).

8. Over 80% of international project finance is conducted under the EPs. Papadopoulos, *supra* note 4, at 11.

9. The term "NGOs" refers to groups that advocate increased corporate responsibility in the realm of environmental and social harms, with Greenpeace being a prominent and well-known example. These groups protest companies and projects that they feel are not sufficiently mindful of social and environmental impacts. *See generally* Niamh O'Sullivan & Brendan O'Dwyer, *Stakeholder perspectives on a financial sector legitimation process: The case of NGOs and the Equator Principles*, 22 ACCT. AUDITING & ACCOUNTABILITY J. 553 (2009).

10. Lack of transparency and subsequent lack of accountability mechanisms is described as the EPs' "fatal flaw." Andrea Durbin, *NGO Comments on the Proposed Revision of the Equator Principles*, BANKTRACK 8 (Apr. 26, 2006), http://www.banktrack.org/download/equator_principles_ii_ngo_comments/0_060428_epii_ngo_position_paper_public_version_final.pdf.

11. *See* Richard Macve & Xiaoli Chen, *The "Equator Principles": a Success for Voluntary Codes?*, 23 ACCT. AUDITING & ACCOUNTABILITY J. 890, 891 (2010).

12. O'Sullivan & O'Dwyer, *supra* note 9, at 567-68.

initiatives, such as the UN's PRI or the recent Rio +20 global summit, might offer a tempting alternative to the Equator Principles, but similarly carry the same inherent weaknesses of all soft law regimes.[13]

This Note provides a brief overview of the Equator Principles, highlights the proposed changes in the EPs, and analyzes whether the EPs will remain relevant. This examination focuses on the broad themes consistently present in the Equator Principles conversation, leaving a particularized treatment of the individual enumerated principles for a later discussion. Part II provides an illustrative case study from the early days of the Equator Principles to show the inconsistent results that have typified the EPs thus far.[14] Part III examines the history and impact of the initial version of the Equator Principles (EP I) and its subsequent revision in Equator Principles II (EP II).[15] Part IV provides a point-by-point comparison between proposed changes that outside observers put forth for EP III and the actual provisions outlined in that version's draft.[16] Part V examines how the Part II case study would likely turn out under EP III,[17] and Part VI focuses on the feasibility and sustainability of the EPs going forward.[18] Finally, the Note concludes with a frank assessment of the Equator Principle's role in international project finance.[19]

II. SUCCESS AND FAILURE IN SOUTH AMERICA

A controversial 2006 project involving a Uruguayan paper pulp mill powerfully illustrates the promise and limitations of the Equator Principles: the EPs provide a symbolic promise of responsibility, to which local NGOs refer in their publicity campaigns, but the lack of enforcement mechanisms mean that their efforts to force accountability may ultimately be in vain.[20] The local borrower promised that the project, a mill to be built along the River Uruguay, would provide

13. *See* Nazari, *supra* note 6.
14. *See infra*, Part II.
15. *See infra*, Part III.
16. *See infra*, Part IV.
17. *See infra*, Part V.
18. *See infra*, Part VI.
19. *See infra*, Part VII.
20. *See generally* Vivian Lee, *Enforcing the Equator Principles: An NGO's Principled Effort to Stop the Financing of a Paper Pulp Mill in Uruguay*, 6 NW. J. INT'L HUM. RTS. 354 (2008).

significant financial benefits to the neighboring area.[21] Uruguay's neighboring country, Argentina, was worried about the possibility of pollution along the shared River Uruguay, particularly since the Argentines would not share in the proposed financial benefits from the project.[22] The facility was to be placed in close proximity to two population centers, the cities of Fray Bentos in Uruguay and Gualeguaychu in Argentina.[23] The risks associated with the paper mill's construction included noise and air pollution, water contamination from the manufacturing process, and an industrializing of what was formerly considered a pristine environment.[24] In Gualeguaychu the primary concern was over the mill's impact on the local tourist industry, the primary means of income for the local population, since the mill would produce foul odors and industrial runoff.[25] The problem was more acute in Fray Bentos, a Uruguayan city of over 35,000 people situated less than a mile from the mill site.[26] Not only would the paper mill extract an average of 86 million cubic meters of water per day (equivalent to what the city uses every month) from the river, it also would dump the water and chemicals used in the pulping process back into the river, upstream from the place that Fray Bentos drew its water supply.[27] The industrial byproducts of the pulping process include dioxins (organic pollutants that have been tied to environmental and health problems)[28] as well as airborne emissions of carbon dioxide and sulfur dioxide (the chemical responsible for acid rain).[29]

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21. The mill was expected to increase Uruguay's GDP by over 2 percent ($350 million) per year, while employing 300 people directly and over 2,200 people indirectly. *Id.* at 360.

22. *Id.*

23. *Botnia and ENCE Pulp Paper Mills Uruguay*, BANKTRACK 3 (Oct. 2005), http://www.banktrack.org/download/botnia_and_ence_pulp_paper_mills_uruguay/051001_investor_briefing_botnia_ence.pdf [hereinafter *Paper Mills*].

24. *Dodgy Deals – Botnia Pulp and Paper Mill*, BANKTRACK, http://www.banktrack.org/show/dodgydeals/botnia_pulp_and_paper_mill#tab_dodgydeals_issues (last visited Jan. 27, 2013) [hereinafter *Dodgy Deals*].

25. *Id.*

26. *Paper Mills*, *supra* note 23, at 3.

27. *Id.*

28. The risks associated with dioxins include miscarriages, birth defects, liver damage, and neurological impairment. There is a risk of dioxins being concentrated in fish and other wildlife, then being passed on to the humans that later ingest them. *Paper Mills*, *supra* note 23, at 5.

29. *Id.* at 6.

A local NGO, the Center for Human Rights and Environment (CEDHA),[30] attempted to use numerous alleged violations of the Equator Principles[31] to launch a public relations campaign against the EPFI financing construction of the mill.[32] The bulk of CEDHA's complaints regarded the complete lack of communication between the project's leaders and the surrounding communities and affected populations, as well as a perceived indifference to the impact that the new industrial site would have on the existing economic environment.[33] In a seemingly positive example of the EPs effectiveness, CEDHA's public shaming was successful in forcing the initial lender, ING, to withdraw from the project altogether.[34] CEDHA's victory was short-lived, however, as Calyon, another EP signatory bank, stepped in to restore financing to the project.[35] CEDHA, faced with Calyon's refusal to withdraw funding from the mill project,[36] failed to elicit more than a perfunctory declaration from an International Finance Corporation (IFC)[37] oversight board that the project borrower had not initially conformed to the EPs procedural requirements.[38] This failure was quickly remedied, and the mill project was completed on schedule.[39] While it may have been easy to remedy the borrower's failure to conduct environmental and social impact surveys, CEDHA and local

30. Centro de Derechos Humanos y Ambiente is an Argentinian non-profit group centered on human rights and preserving environmental resources. *Mission and Activities*, CENTRO DE DERECHOES HUMANOS Y AMBIENTE, http://wp.cedha.net/?page_id=6271&lang=en (last visited Jan. 27, 2013).

31. CEDHA alleged that the project borrower had violations under Principles 1 (deficient environmental and social screening), 2 (inadequate Environmental Impact Assessment), 3 (inadequate consideration of numerous environmental hazards associated with running the mill), 4 (failure to prepare an Environmental Management Plan), and 5 (lack of consultation between borrowers and the community) of the original Equator Principles. *See* Lee, *supra* note 20, at 363-64.

32. CEDHA sent numerous letters to the two EPFIs associated with the project, citing the various infractions and the subsequent environmental impact on the area. *See id.* at 361.

33. *Paper Mills*, *supra* note 23, at 8.

34. Lee, *supra* note 20, at 364.

35. *Id.*

36. *Id.* at 365.

37. The IFC is the private sector branch of the World Bank, focused on private development in developing countries. It has 184 member countries, and provides funding as well as advisory services for projects in over 100 developing countries. *See About IFC*, INTERNATIONAL FINANCE CORPORATION, http://www1.ifc.org/wps/wcm/connect/corp_ext_content/ifc_external_corporate_site/about+ifc (last visited Jan. 27, 2013).

38. *Id.* at 369-70.

39. *See id.* at 370.

stakeholders felt that the damage those surveys meant to prevent had already been wrought. To these observers it seemed that the procedural requirements of an environmental assessment and stakeholder engagement were not meant to stop problematic projects, but rather were intended to provide criteria that a project borrower could check off on the way to building harmful ventures. CEDHA and other observers lamented the lack of enforcement mechanisms in the EPs,[40] and the Uruguay paper mill became a symbol for the inability of the EPs to effect real change.[41]

III. ADOPTION AND IMPLEMENTATION OF THE EQUATOR PRINCIPLES

A. EP I

In 2003 the Equator Principles arose from a coordinated effort[42] between international lending institutions[43] and the IFC to implement a framework to manage the social and environmental risks associated with financing projects in developing countries.[44] These projects range from power plants to copper mines to water treatment facilities.[45] The need for such a framework was apparent, as the withdrawal of the International Monetary Fund from international project finance had left a vacuum that private investors were rapidly filling.[46] These investors faced rising criticism from environmentally-conscious NGOs who

40. *Id.* at 373.

41. *See* Durbin, *supra* note 10, at 7.

42. *See History of the Equator Principles*, *supra* note 3.

43. The original signatories of the Equator Principles were ABN AMRO, Barclays, Citigroup, WestLB, Credit Lyonnais, Credit Suisse First Boston, Hypo Vereinsbank, Rabobank, The Royal Bank of Scotland, and Westpac. *See* O'Sullivan & O'Dwyer, *supra* note 9, at 364-65.

44. The impetus for the creation of the EPs arose from several notorious infrastructure projects that created environmental and humanitarian crises. Notable among these was the development of the Three Gorges Dam in China. *See* Macve & Chen, *supra* note 11, at 892.

45. The draft of EP III provides some examples of covered projects: "a power plant, mine, oil and gas Project (including drill ships and Floating Production Storage and Offloading (FPSO) vessels), chemical plant, infrastructure development, manufacturing plant, large scale real estate development." *See EP III (Draft)*, *supra* note 1, at 15.

46. The IMF withdrew from project finance due to the high-profile protests that NGOs were coordinating against such projects. Prior to IMF's withdrawal the organization had imposed environmental and social standards on projects in developing countries; the withdrawal of the IMF marked the corresponding withdrawal of these explicit safeguards. *See* John Conley & Cynthia Williams, *Global Banks as Global Sustainability Regulators?: The Equator Principles*, 33 L. & POL'Y 542, 543-44 (2011).

feared that private investment firms would introduce a brand of ruthless capitalism into developing countries' infrastructure projects.[47] As a result, the primary targets of the NGOs' efforts, large international financial institutions, agreed to voluntarily impose limitations and guidelines for their project financing efforts.[48] The standards that emerged were pinned to the IFC's own Performance Standards[49] and contained a set of nine principles designed to mitigate the social and environmental risks associated with project financing.[50] Any project that rose above the threshold of $50 million[51] would fall into one of three risk categories, depending on the magnitude of the concern. Category A was for projects "with potential significant adverse social or environmental impacts that are diverse, irreversible, or unprecedented;" Category B was for projects "with potential limited adverse social or environmental impacts that are few in number, generally site specific, largely reversible, and readily addressed through mitigation measures;" Category C was for projects "with minimal or no social or environmental impacts."[52] Projects that were deemed to carry a substantial risk were required to undergo increased scrutiny and reporting requirements in order to insure any environmental or social hazards were eliminated or mitigated.[53] These requirements were enforced by loan covenants that tied the project's financing to borrower compliance. While these covenants seemed to create a method of enforcement, the nature of the project loans (where the lender was paid back by the proceeds of the completed project) meant that EPFIs were more likely to bring the project up to minimum standards than to cancel the venture altogether.

At first glance, the newly minted EP I appeared to be a promising step towards increased social responsibility in the

47. *Id.* at 544.

48. *Id.*

49. *See History of the Equator Principles*, *supra* note 3.

50. The EPs define project financing as "a method of funding in which the lender looks primarily to the revenues generated by a single Project, both as the source of repayment and as security for the exposure." *EP III (Draft)*, *supra* note 1, at 15.

51. Andreas Missbach, *The Equator Principles: Drawing the Line for Socially Responsible Banks? An Interim Review from an NGO Perspective*, 47 DEV. no. 3, 2004 at 79.

52. Jane Andrew, *The Equator Principles, Project Finance and the Challenge of Social and Environmental Responsibility*, 1 ISSUES IN SOC. & ENVTL. ACCT. 1, 5-6 (2007).

53. *See id.* at 6.

international finance community, a development for which NGOs and industry observers had waited a long time.[54] It quickly became apparent, however, that EP I did not have the level of impact that many NGOs and stakeholders had initially hoped.[55] The standards did not include a review body,[56] formal transparency or implementation requirements,[57] or mandated compliance procedures.[58] These limitations meant that there was no way for observers to determine how thoroughly or honestly EPFIs were adopting the EP I standards.[59] The perceived shortcomings also led many critics of EP I to assert that EPFIs were only signing onto the EPs for public relations purposes, without any real desire to implement social or environmental safeguards in their lending practices.[60] The lack of an effective grievance mechanism presented another set of difficulties, as EP I did not provide a procedure for affected populations and stakeholders to address concerns with the EPFIs responsible for a project's financing.[61]

To many, it seemed that the EPs were not meant to effect real environmental and social change, but instead were simply an internal mechanism EPFIs were using to limit their own risk exposure[62] while garnering praise for apparent socially responsible behavior.[63] The NGOs who had exerted public pressure on international lending institutes to be more socially responsible[64] believed that the EPFIs' promises of substantial change had lulled watchdog groups into a false sense of achievement,[65] especially since several EPFIs continued to fund projects that seemingly violated both the letter and spirit of the EPs.[66] Cases such as the paper pulp mill in Uruguay were neither

54. *See* Macve & Chen, *supra* note 11, at 892.

55. *See generally* Missbach, *supra* note 51.

56. Andrew, *supra* note 52, at 6.

57. Andrea Durbin, *supra* 10, at 8 (describing lack of transparency and accountability mechanisms as the EPs "fatal flaw").

58. O'Sullivan & O'Dwyer, *supra* note 9, at 571.

59. *Id.*

60. *Id.*

61. Lee, *supra* note 20, at 361.

62. Since project loans are often financed by the proceeds of the project itself, any delay due to labor strife or environmental sanctions would necessarily limit the ability of EPFIs to recoup their investment. *See id.* at 362.

63. O'Sullivan & O'Dwyer, *supra* note 9, at 571.

64. Conley & Williams, *supra* note 46, at 558.

65. O'Sullivan & O'Dwyer, *supra* note 9, at 570.

66. *See id.* at 570-71 (referencing the Baku-Tablisi-Ceyhan and Sakhalin II pipeline

remarkable nor isolated,[67] leading to cries for changes to the freshly-adopted EP I.

B. EP II

In 2006, after three years of observation, suggestions, and feedback, the EPs underwent their first revision when the EPFIs and the IFC agreed to revise the Principles in parallel to the IFC's own update process.[68] This modification was due to a change in the IFC's safeguard policies[69] rather than as a direct result of vocal complaints about EP I.[70] The result, dubbed EP II,[71] increased the scope and ambition of the Equator Principles in several fundamental ways.

1. Scope of Coverage

Not only was the monetary threshold for EP application lowered from $50 million to $10 million, the scope of the framework was extended from pure project finance to include project advisory activities as well.[72] Project advisory activities are "the provision of advice on the potential financing of a development where one of the options may be Project Finance."[73] The lowering of the financing threshold was implemented in part to increase the number of projects that would fall under the EPs; not only was this a proactive approach to increase the reach of the EPs, it was also a reaction to the reality that many EPFIs had already voluntarily adopted a lower threshold for their own lending practices.[74] Similarly, the extension to project advising was meant to

projects).

67. *See generally* Durbin, *supra* note 10.

68. *See About the Equator Principles*, EQUATOR PRINCIPLES ASS'N, http://www.equator-principles.com/index.php/about (last visited Jan. 27, 2013).

69. The IFC's safeguard policies are the environmental and social restrictions that the organization puts on its own lending practices into developing countries. The EPs closely mirror the IFC's guidelines, but whereas the EPs' members are comprised of private lending institutions, the IFC is made up of sovereign countries. *See About IFC*, *supra* note 43.

70. O'Sullivan & O'Dwyer, *supra* note 9, at 573.

71. *The Equator Principles*, EQUATOR PRINCIPLES ASS'N (June 2006), http://www.equator-principles.com/resources/equator-principles.pdf [hereinafter *EP II*].

72. *Id.* at 2.

73. *EP III* (*Draft*), *supra* note 1, at 13.

74. *See* PAUL Q. WATCHMAN ET AL., LEBOEUF, LAMB, GREENE & MACRAE, WHY HARD-NOSED BANKERS ARE ADOPTING SOFT LAW PRINCIPLES 9 (Jan. 2007),

not only increase the number of candidate projects, but also to reflect the fact that member banks had been spreading the framework of the EPs to other financial transactions and products.[75] The new provisions of EP II also applied to both new projects and extensions of existing projects where the social or environmental impact of the upgrade was significant.[76] An extension that was deemed to create a "significant" impact would necessitate a re-assessment of the entire project; while this would be a costly expenditure, the heightened "significant" standard probably was expected to affect only a few projects.[77]

2. Grievance Mechanisms

EP II also required that borrowers in all Category A or B projects in non-OECD[78] or non-High Income OECD countries had to develop and promote a grievance mechanism designed to hear, and hopefully remedy, any concerns project-affected populations might raise.[79] This addition was in response to criticism from NGOs over the lack of communication between affected populations and the borrowers responsible for the environmental and social harms that are often the result of large industrial projects.[80] This change, along with additional consultation requirements,[81] meant that there was a higher level of meaningful interaction between the project-affected population and the borrower than under EP I.

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http://www.equator-principles.com/resources/ClientBriefingforEquatorPrinciples_2007-02-07.pdf.

75. *Id.* at 10-11.

76. *EP II*, *supra* note 71, at 2.

77. WATCHMAN ET AL., *supra* note 74, at 12.

78. OECD refers to the Organization for Economic Co-operation and Development, a group whose membership is comprised of the largest economies in the world and whose aim is "to promote policies that will improve the economic and social well-being of people around the world." In this context, the EPs are using them as a known rubric by which to differentiate which countries need more oversight than others. *See About the OECD*, OECD, http://www.oecd.org/about/ (last visited Jan. 20, 2013).

79. *EP II*, *supra* note 71, at 4.

80. WATCHMAN ET AL., *supra* note 74, at 16-17 (referencing the Sakhali II pipeline and Uruguayan paper pulp mills).

81. Principle 5 of EP II states that projects with significant social or environmental impacts should be accompanied by "free, prior and informed consultation" which the borrower will communicate back to the EPFI. *EP II*, *supra* note 65, at 4.

3. Reporting Requirements

EP II added a new Principle, Principle 10 (EPFI Reporting),[82] which required all EPFIs to publish reports at least once a year detailing their implementation of and experience with the EPs.[83] The text of EP II went on to state that, "[s]uch reporting should at a minimum include the number of transactions screened by each EPFI, including the categorization[sic] accorded to transactions (and may include a breakdown by sector or region), and information regarding implementation."[84] This new responsibility came with an important caveat: the EPFI could amend its reporting by "taking into account appropriate confidentiality considerations."[85] The text did not include any additional information concerning the method of reporting or level of required detail,[86] leaving EPFIs to implement the new Principle however they saw fit. The net effect of Principle 10 was that EPFIs were able to point to the requirement as proof that they were fulfilling their obligation to be transparent and open, while hiding any questionable practices under the guise of "confidentiality considerations."[87]

C. Reaction to EP II

Responses to EP II came before the final version of the update was even published, with NGOs complaining that drafts of the new Principles did not do enough to remedy the perceived defects of EP I.[88] Many felt that the EPs, by lowering the threshold for coverage, were sacrificing effectiveness for inclusiveness.[89] Some observers also criticized the EP II's continuing reliance on IFC Performance Standards;[90] not only was EP II pegged to those Standards, updates to EP II could only occur in conjunction with the IFC's own review

82. *Id.* at 6.
83. *Id*.
84. *EP II*, *supra* note 71, at 6 n.6.
85. *EP II*, *supra* note 71, at 6.
86. *Id.*
87. Andrew, *supra* note 52, at 7.
88. Durbin, *supra* note 10, at 3.
89. *Id.*
90. *Bold Steps Forward*, *supra* note 6, at 2.

process. NGOs applauded the expansion of EP II to include advisory functions and project expansions,[91] but still felt that the EPs were being applied too narrowly.[92] These groups emphasized that it was the size of the project, not a particular label or method of finance that should determine an EPFI's use of the EPs.[93] Another persistent criticism was the continuing lack of sufficient transparency and enforcement mechanisms, a problem "as old as the Principles itself."[94] The newly-created Principle 10 was also seen as only a half-measure, since it allowed EPFIs to escape any true reporting "requirement" by simply exercising their right to keep client information confidential.[95]

Despite the criticisms lobbed at EP II, the Equator Principles have continued to flourish. The number of EPFIs has grown from the original ten to now almost eighty banks and financial institutions,[96] with approximately thirty Export Credit Agencies and fifteen European Development Finance Institutions adopting similar measures for their own practices.[97] These EP-adopting institutions constitute over eighty percent of international project finance lenders,[98] making the Principles the "de facto environmental and social risk management standard"[99] for projects in developing countries. Despite their shortcomings, one observer maintains that "the EPs clearly have improved the situation by placing the private sector in a proactive environmental role and strengthening the public's ability to hold the financial sector accountable for its actions."[100]

IV. EP III

The Equator Principles Association (EPA) was created in July 2010 with the goal of facilitating the continued survival and management of the EPs.[101] Two years later, in July 2012, the EPA

91. Durbin, *supra* note 10, at 5.
92. *Id.*
93. *Id.*
94. *Bold Steps Forward*, *supra* note 6, at 5.
95. *See* Andrew, *supra* note 52, at 7.
96. Nazari, *supra* note 6.
97. *Id.*
98. Papadopoulos, *supra* note 4, at 11.
99. Nazari, *supra* note 6.
100. Papadopoulos, *supra* note 4, at 12.
101. *The Equator Principles Association – Governance and Management*, EQUATOR

initiated the process to create EP III with a commitment to address many of the issues that critics of the EPs raised.[102] The EPA published the draft of EP III[103] on August 13, 2012, with a planned consultation and comment period to last at least 60 days.[104] The public comments available as of November 1, 2012, provide a sense of the reaction to the proposed changes.[105] Moreover, a useful exercise to help gauge the depth of change the EPA has implemented with this new version is to compare the recent additions with the suggestions and recommendations for EP reform made by two knowledgeable observers: the collection of NGOs known as BankTrack and the EPA-directed Strategic Review Board.

The NGO group BankTrack[106] is "an international coalition of NGOs campaigning for greater financial institution responsibility and accountability."[107] BankTrack was created in an effort to provide a united front from which NGOs could directly engage with EPFIs and the EPA itself.[108] In October 2011, BankTrack published a report as part of the update process for EP III titled "The Outside Job."[109] This report detailed numerous recommendations for the latest draft of the EPs.[110] In addition to a general exhortation for the EPs to focus more on external community development than internal structural

PRINCIPLES ASS'N, http://www.equator-principles.com/index.php/about/governance-and-management (last visited Jan. 20, 2013).

102. The update was focused on, among other things, the scope of the EPs, reporting and transparency, and stakeholder engagement during the updating process. *History of the Equator Principles*, *supra* note 3.

103. *See EP III (Draft)*, *supra* note 1.

104. *About EP III Update Process and Timeline*, EQUATOR PRINCIPLES ASS'N, http://www.equator-principles.com/index.php/ep3/process-and-timeline (last visited Jan. 20, 2013).

105. *See, e.g.*, Client Alert, Gavin Scott et al., Ashurst Australia LLP, Equator Principles III – New Standards for Project Financing, 3, (Aug. 15, 2012) (on file with Ashurst), www.ashurst.com/page.aspx?id_content=8134 [hereinafter Ashurst Alert].

106. *About BankTrack*, BANKTRACK, http://www.banktrack.org/show/pages/about_banktrack (last visited Jan. 20, 2013).

107. O'Sullivan & O'Dwyer, *supra* note 9, at 559.

108. *Id.* at 576-77.

109. Jan Willem van Gelder et al., *The Outside Job: Turning the Equator Principles Towards People and Planet*, BANKTRACK (2011), http://www.banktrack.org/download/the_outside_job/111021_the_outside_job_final.pdf (proposing several changes and recommendations intended to influence the EPs' revision process).

110. *See generally id.*

efficiency,[111] the BankTrack report also outlined several specific critiques that should be kept in mind when reviewing the actual content of the proposed EP III.

The EPA's Strategic Review Board was developed as an internal review process aimed at making productive recommendations for the next version of the Equator Principles.[112] This Strategic Review Board was tasked with reviewing the state of the finance industry and the existing standards in an attempt to maintain the EPs' international prominence.[113] The Review Board's suggestions were in no way binding on the EPFIs or EPA, but they nonetheless provided insight by a knowledgeable observer by which to gauge the progress and promise of EP III. As the report states, "the time for change has come."[114] The recommendations that these two groups made are coupled with the proposed changes to the EPs in the EP III draft, representing the most common sources of criticism surrounding the Equator Principles.

A. Transparency

A now-familiar criticism of the EPs is the lack of transparency on both the EPFI and borrower level; BankTrack's report is no different, with calls for increased transparency for both creditors and borrowers.[115] On the bank level, the report suggests new standards: publicly-available targets for implementation once a new bank joins the EPs; public information about the number of transactions and projects screened under the EPs; third-party confirmation regarding compliance with reporting guidelines; and information about what projects failed to meet the requirements detailed in the EPs.[116] While EPFI's have criticized these long-standing NGO requests as a "naïve" understanding

111. *Id.* at 3.

112. *See generally* Suellen Lazarus & Alan Feldbaum, *Equator Principles Strategic Review – Final Report*, ENVTL. RESOURCE MGMT. at 1 (Feb. 17, 2011), *available at* http://www.equator-principles.com/resources/exec-summary_appendix_strategic_review_report.pdf (outlining proposals made by the Strategic Review Board). The Review Board was comprised of external consultants and guided by the EPA's Steering Committee.

113. *Id.*

114. *Id.*

115. van Gelder et al., *supra* note 109, at 5-6.

116. *Id.* at 5.

of how banks operate,[117] BankTrack maintains that public scrutiny is the only way that EPFIs will truly fulfill the spirit of the EPs.[118] The EP Association's Strategic Review report also highlights the need for increased transparency and disclosure on the part of the EPFIs.[119] Increased transparency will not only bring about uniform implementation among the various EPFIs, it will also help alleviate the well-known problem of free-riders who pay mere lip service to the Principles.[120]

While the EP Association's Strategic Review did not discuss the subject of project-level transparency and disclosure,[121] BankTrack's own report contained numerous recommendations to improve the interaction between the borrower and any affected populations.[122] In an attempt to provide meaningful consultation and engagement, BankTrack suggests EP III should require borrowers to: identify which of their projects fall under the EPs; publicize any social or environmental requirements in the loan covenants; provide detailed information regarding available grievance mechanisms; and provide all social and environmental reports to the public.[123] These suggestions are in line with BankTrack's overall desire to make the EPs more responsive to the communities that EPFI-funded projects affect.

The draft of EP III contains provisions aimed at both EPFIs and borrowers.[124] For instance, "Principle 10: Reporting and Transparency" requires all EPFIs to issue a report at least once a year detailing the transactions the financial institution has reviewed and accepted as well as the procedures in place to implement the EPs.[125] This requirement still carries the dubious exception that concerns over client confidentiality may limit such disclosures.[126] Projects that fall within certain criteria[127] will require the borrower to report on the level of

117. O'Sullivan & O'Dwyer, *supra* note 9, at 569.
118. van Gelder et al., *supra* note 109, at 6.
119. Lazarus & Feldbaum, *supra* note 112, at 5-6.
120. *Id.* at 5.
121. *See generally id.*
122. van Gelder et al., *supra* note 109, at 6-7.
123. *Id.* at 7.
124. Ashurst Alert, *supra* note 105, at 3.
125. *EP III (Draft)*, *supra* note 1, at 8.
126. *Id.*
127. All category A and category B projects, in all countries, that emit over 100,000 tons of carbon dioxide annually. *Id.*

greenhouse gas emissions that occur during the operational phase.[128] Borrowers for high- and medium-impact projects will also be required to disclose to the public their assessment documentation, as well as results from the stakeholder consultation process.[129]

B. Scope

One of the most significant recommendations in the BankTrack report related to an extension of the scope of the EPs to cover additional financial instruments such as corporate loans in addition to project finance and advisory services.[130] BankTrack believes that traditional project finance only covers a fraction of the international finance business,[131] meaning that the beneficial impacts of the EPs are significantly limited in reach. The EP Strategic Review also suggests a broadening of the scope of the EPs to include corporate loans that use fifty percent or more of the proceeds towards a single asset.[132] Both of these reports' suggestions focus on bringing the EPs to a larger percentage of the global finance market in an effort to positively influence as many projects and populations as possible.

In line with these recommendations, the EP III draft extends the scope of coverage[133] to include project-related corporate[134] and bridge loans.[135] To qualify for coverage, corporate loans must be for a single project with a loan duration of at least two years, with a total loan amount of at least $100 million, with an initial EPFI exposure of at least $50 million, and under circumstances where the borrower has control of

128. *Id.*
129. *Id.*
130. van Gelder et al., *supra* note 109, at 11.
131. *Id.*
132. Lazarus & Feldbaum, *supra* note 112, at 8 (Recommendation 7).
133. *EP III (Draft)*, *supra* note 1, at 3.
134. The glossary of EP III defines project-related corporate loans as "corporate loans, made to business entities . . .related to a single Project . . .where the Known Use of Proceeds is related to a single Project" through: the lender using the revenues of the project to repay the loan; the security for the loan being in the form of a corporate or parent company guarantee; or documentation for the loan revealing that the majority of the loan is going to a single project. Notably, general corporate purposes loans are not covered by EP III. *Id.* at 13.
135. *Id.* (defining bridge loans as "an interim loan given to a business until the longer term stage of financing can be obtained." *Id.*

the project.[136] The requirements for bridge loans will depend on the development stage of the project, but in general they must have a loan duration of at least two years and an expectation to be refinanced through standard project financing or a project-related corporate loan.[137] This extension of the EPs seems to incorporate the changes implored by both the EP Strategic Review and BankTrack's report, and signifies a significant expansion of the EPs to other areas of finance.

C. Environmental and Social Impacts

According to NGOs and outside observers, provisions concerning environmental and social impacts are long overdue. The BankTrack report offers a fairly detailed critique, with recommendations that range from monitoring of greenhouse emissions[138] to establishing target emission levels for funded projects.[139] Perhaps the most ambitious suggestion is a general prohibition on funding certain types of projects deemed too harmful for success mitigation under the EPs.[140] These prohibited projects include: new coal-fired power plants; new coal, oil, or gas extraction projects; large-scale hydroelectric plants; and nuclear energy plants.[141] The Strategic Review does not mention environmental concerns beyond a general desire to adopt a common approach to avoid widely varying applications among EPFIs.[142] The fear is that, if the EPs merely adopt vague standards or purely aspirational language, any meaningful changes would be circumvented by creative efforts on the part of shady borrowers or insincere lenders. The Strategic Review is similarly silent in the area of social impacts, providing nothing more than a general recommendation to incorporate human rights concerns into the EPs.[143] The BankTrack report focuses predominantly on the general issue of human rights as well,[144] with the only particulars being an established

136. *Id.* at 2.
137. *Id.* at 3.
138. van Gelder et al., *supra* note 109, at 15.
139. *Id.*
140. *Id.* at 11.
141. *Id.* at 14.
142. Lazarus & Feldbaum, *supra* note 112, at 9 (Recommendation 14).
143. *Id.*
144. van Gelder, *supra* note 109, at 15-16.

grievance mechanism and a framework to guide banks when a due diligence assessment is necessary.[145] The BankTrack report does not detail what exactly would be necessary to constitute "due diligence," instead saying that a corresponding Human Rights Impact Assessment should draw on "well-developed standards."[146] In practice such due diligence procedures would likely encompass impact assessments regarding both environmental and social concerns.

The heightened attention paid to environmental and social concerns is apparent from the very first page of the EP III draft, where the Preamble includes: mention of climate impacts that should be minimized, compensated for, or offset; a responsibility to undertake due diligence procedures[147] to respect human rights; and a reiteration of the EPFIs' commitment to not provide financing to borrowers who cannot or will not follow the standards of EP III.[148] The Principles outlined in EP III have themselves undergone a change, as evidenced by the variations in the names of the Principles. While these changes may appear somewhat superficial, they seem to evidence a heightened commitment to environmental and social guardianship among the EPFIs. The draft of EP III also contains the words "human rights" for the first time (referencing the EPs responsibility to respect human rights)[149] and includes language focused on employing due diligence to prevent negative impacts on the rights of affected populations.[150]

An additional change to the substance of the Equator Principles is in Principle 5's increased focus on "Stakeholder Engagement" rather than the ambiguous "Consultation and Disclosure." Instead of merely notifying local populations that an extensive project was about to be commenced, EP III seems to focus on a more interactive and collaborative approach with local stakeholders and observers. One persistent criticism of the EPs, as CEDHA's experience in Uruguay

145. *Id.* at 16.

146. *Id.*

147. "The EP provides financial institutions the required 'due diligence' framework to identify, assess and manage project impacts by defining the processes and standards for stakeholder engagement with affected communities (including for Indigenous Peoples), labor rights, and occupational and community health and safety." *Frequently Asked Questions on the Equator Principles (EP III) Update*, EQUATOR PRINCIPLES ASS'N, http://www.equator-principles.com/resources/EPIII_FAQS.pdf (last visited Jan. 20, 2013).

148. *EP III (Draft)*, *supra* note 1, at 2.

149. *Id.*

150. Ashurst Alert, *supra* note 105, at 3.

suggests, is that there is not a consistent level of consultation and involvement between affected populations and the borrowers who construct the projects financed under the EPs. The draft states that EP III-bound projects that fall under high-impact Category A (or, in certain circumstances, medium-impact Category B) will require the borrower to conduct stakeholder engagement with any affected populations.[151] These consultations must be geared to the affected population, with appropriate cultural and lingual allowances.[152] Most interesting is a requirement that for certain projects in developing countries the borrower must obtain actual "free, prior, and informed consent" from indigenous populations before beginning work on projects that have adverse effects on the local population.[153] The text is silent as to what exact methods or formalities are required to obtain this consent. This change marks a significant development in the EPs, as it allows affected populations to control their own destinies and development. Another point of emphasis in Principle 5 of EP III is that the stakeholder consultation process should be free of coercion or intimidation, hopefully allowing for a more open dialogue between borrowers and the people they affect.[154]

V. A LOOK BACK

This Note began with a case study involving a paper pulp mill in Uruguay that was built over the objections of the local population and NGOs; it will serve a comparative function to examine that event briefly through the changes reflected in EP III. One obvious point of emphasis that has not changed since the original EP I is the fact that the EPs are not meant to create any legal obligations or liability on behalf of either the EPFI or the borrower.[155] Similarly, there is no requirement for an EPFI to withdraw funding from a project for failure to follow the EPs.[156] The latest edition of the EPs, however, does contain important

151. *EP III (Draft)*, *supra* note 1, at 6 (Principle 5).

152. *Id.*

153. *Id.*

154. *Id.*

155. The disclaimer at the end of the EP III draft states, in part, that the EPs "do not create any rights in, or liability to, any person, public or private." *Id.* at 9.

156. Principle 8 of EP III states that where "a borrower is not in compliance with its environmental and social covenants, the EPFI will work with the borrower on remedial measures." *EP III (Draft)*, *supra* note 1, at 7-8.

and necessary mechanisms to help affected populations engage with the borrowers and the financial institutions that finance their projects.

The first place where the affected populations of Uruguay and Argentina would benefit is from EP III's consultation requirements. Principle 5 mandates that the borrower conduct a respectful consultation process with stakeholders free of intimidation or coercion.[157] In the case of the Uruguayan paper pulp mill this requirement would mean that the populations of both countries would have a chance to air their concerns and protests in a forum tailored to their needs. If the proposed project affected indigenous people, then they potentially could withhold consent, though the text of the EP is silent regarding the process that would follow such a move.[158] The presumption is that a local population's stubborn refusal to consent to a project would result in the project being reimagined or even relocated.

Another area in which EP III has built upon the failings of its predecessors is the grievance mechanism available to stakeholders and populations.[159] While this assurance is noticeably without any method of enforcement, it still presents a venue from which affected persons can air their particular issues with the ongoing project. This mechanism is to be publicized to potential affected communities during the consultation process,[160] and would ideally create a dialogue between the population and borrower that might resolve misunderstandings.

VI. THE EQUATOR DECADE

Nearly ten years have passed since the first adoption of the Equator Principles, and the recent release of the EP III draft provides a useful reference point in evaluating past progress as well as future potential. The initial step in reviewing the efficacy of the EPs is determining what exactly constitutes success or failure under the voluntary framework. Different stakeholders, from NGOs to local affected populations to large international lending institutes, all have different expectations about what the Equator Principles can accomplish as well as alternative viewpoints about the impact the EPs have had on

157. *Id.* at 6.
158. *Id.* at 6.
159. *Id.*
160. *Id.*

international project finance. Looking forward, it is useful to examine alternative approaches and regimes for handling social and environmental concerns. Only by examining the full picture can a useful evaluation of the EPs be accomplished.

Many EPFIs and outside observers look at the very existence of the Equator Principles as a success.[161] After the withdrawal of the IMF and World Bank from project lending in the 1990s,[162] many NGOs felt that private banks would pursue profits ruthlessly with little concern for the impacts on local populations.[163] The voluntary adoption of the EPs by these same banks was initially heralded as a triumph, even amongst normally skeptical NGOs and environmental groups.[164] In this line of thinking, the EPs' continued spread to additional banks and other areas of finance is certainly a success, and EP III's additional requirements concerning climate impact and borrower involvement mark further steps in a gradual, yet positive, evolution in the financial world. EPFIs view the EPs as a way to improve bad projects through responsible corporate governance and manage the various risks associated with lending,[165] meaning that the success of the EPs can be tied directly to the number of banks and projects that fall under their purview. Even the most skeptical NGO would admit that the adoption and implementation of the EPs, at a minimum, has raised the level of awareness concerning social and environmental impacts of the projects financed under the EPs.[166] Once again, the definition of success is not fixed or agreed upon, leaving many observers to decry the EPs as a goal in themselves.

While EPFIs have touted the steady spread of the Equator Principles as a sign of their success,[167] others have instead pointed to the low opportunity cost that banks incur by signing on to the EPs[168] as an indication that they are designed to be touted rather than truly transformative. NGOs feel that the initial signatory banks developed the EPs as a result of public pressure and outcry rather than from some

161. *See* O'Sullivan & O'Dwyer, *supra* note 9, at 568.
162. Conley & Williams, *supra* note 46, at 543.
163. *See* O'Sullivan & O'Dwyer, *supra* note 9, at 562.
164. van Gelder, *supra* note 109, at 2.
165. Macve & Chen, *supra* note 11, at 898-99.
166. *Id.* at 898.
167. Conley & Williams, *supra* note 46, at 562-63.
168. O'Sullivan & O'Dwyer, *supra* note 9, at 570-71.

altruistic desire to achieve more just business practices.[169] These NGOs initially greeted the EPs with enthusiasm and optimism, but they have been disappointed by the fact that banks are not publicly decrying and distancing themselves from troublesome perspective projects.[170] These outside observers hoped that the EPs would become a weapon, designed to eliminate the funding of impactful projects and promote the protection of local populations; instead they view the EPs as a banker's façade, designed to provide cover to EPFIs while they continue to make money from objectionable projects.[171]

Even if the Equator Principles do not realize the lofty expectations of NGOs and outside observers, the question still remains: is there a better framework for achieving sustainable project financing in developing countries? Several alternative programs have emerged since the EPs conception in 2003, and these voluntary efforts may provide a better arrangement for both lenders and stakeholders.[172] One prominent example is the United Nations' Principles for Responsible Investment Initiative (UN PRIs) that was developed in 2005.[173] This initiative currently has over 1,000 financial institutes as signatories, and provides an opportunity for banks and other lending agencies to co-opt the well-known United Nations brand for their own self-promotion.[174] The UN PRIs focuses on six principles[175] (not to be confused with the Equator Principles) regarding environmental, social, and corporate governance (ESG) that signatories must adopt.[176] With over $30 trillion in combined assets,[177] the size and depth of this initiative means that

169. *See id.* at 564-65.
170. van Gelder, *supra* note 109, at 2-3.
171. *Id.*
172. *See* Nazari, *supra* note 6.
173. *Id.*
174. *Id.*
175. The six UN PRI Principles are: (1) To incorporate ESG issues into investment analysis and decision-making processes; (2) To be active owners and incorporate ESG issues into ownership policies and practices; (3) To seek appropriate disclosure on ESG issues from companies in which they invest; (4) To promote acceptance and implementation of the Principles within the investment industry; (5) To work together to enhance effectiveness under the Principles; (6) To report on activities and progress towards implementing the Principles; *See Principles for Investors in Inclusive Finance*, PRINCIPLES FOR RESPONSIBLE INV., *available at* http://www.unpri.org/principles/ (last visited Jan. 20, 2013).
176. *See id.*
177. Nazari, *supra* note 6.

any measurable impact is sure to be felt in a wide and diverse range of projects and countries. However, the UN PRIs carry the familiar disclaimer common in soft law: "There are no legal or regulatory sanctions associated with the Principles. They are designed to be voluntary and aspirational."[178] Similar to the Equator Principles, the UN PRIs do not carry any enforcement power beyond reputational risk and public shaming.

The United Nations has also focused on a nation-based approach to environmental and social responsibility through its Rio +20 initiative.[179] Rio +20 was a conference on sustainable development held in Rio de Janeiro in June 2012 that focused on the dual themes of (1) eradicating poverty while creating a green economy, and (2) establishing an institutional framework to achieve that goal.[180] The seven priority areas for Rio +20 were "decent jobs, energy, sustainable cities, food security and sustainable agriculture, water, oceans, and disaster readiness."[181] It was the hope of Rio +20's organizers that the conference would prompt countries to pursue sustainable methods of development in their own countries and through their own legal systems. This approach, while another example of soft law, is perhaps the most viable method of enforcing responsible practices, since it will influence the legal systems of sovereign countries to regulate projects and development within their borders.

VII. CONCLUSION

To many observers the introduction of the Equator Principles in 2003 represented the hope that the standards would "help safeguard the rights and interest of local stakeholders and protect the environment, while also leading to increased, sustainable business opportunities."[182]

178. *FAQs*, PRINCIPLES FOR RESPONSIBLE INV., *available at* http://www.unpri.org/about-pri/faqs/ (last visited Jan. 20, 2013) (the disclaimer is located under the question "What happens if we sign but find it difficult to comply?").

179. *About Rio+20*, UNITED NATIONS CONFERENCE ON SUSTAINABLE INV., *available at* http://www.uncsd2012.org/about.html (last visited Jan. 20, 2013).

180. *Id.*

181. *Id.*

182. *Bold Steps Forward: Towards Equator Principles that Deliver to People and the Planet*, BANKTRACK 2 (Jan. 2010), http://www.banktrack.org/download/bold_steps_forward/100114_civil_society_call_equator_principles.pdf (reporting on the status of the Equator Principles from the view of an outside

While many NGOs and others complained about shortcomings such as a lack of transparency or enforcement mechanisms,[183] it was hoped that the EPs would develop more effective procedures as they were developed and refined. Now, nine years after the initial launch of EP I, it seems that many of the initial concerns have been addressed. EPFIs must now issue reports at least once a year that detail the ways they use and implement the EPs. In addition, borrowers are forced, through loan covenants in the finance documentation, to comply with EP requirements concerning climate impact, stakeholder engagement, and Action plans. These improvements to the EPs mean that a public shaming campaign such as the one CEDHA implemented in Uruguay would have more information as ammunition, as well as additional avenues to contact and interact with the project borrowers themselves. That said, one glaring complaint remains: the Equator Principles don't actually force EPFIs to do anything. There is no "delisting" mechanism, nor is there any civil or criminal liability attached to a failure to implement the EPs. This means that an EPFI who chooses to endure public criticism is still free to selectively implement the EPs in whichever projects it sees fit, with no real method of recourse available to affected populations. While large, prominent international banks probably will forgo the public relations headache associated with "free-riding" on the EPs, there is nothing to stop smaller financial institutions in developing countries from doing just that.

As many NGOs have feared from the beginning,[184] the only method of holding EPFIs accountable is through public pressure and shaming. It is unlikely that large international financial institutions, committed to earning profits for their shareholders above all else, would volunteer to open themselves up to legal liability or forced disclosures of internal business decisions. In such a corporate environment it is doubtful that the EPs will ever be more than a framework that ultimately helps EPFIs make business decisions rather than a tool that directly aids vulnerable people and places. This failure may ultimately be attributed to the inherent shortcomings in "soft law" governance, which operates in the regulatory space between wholly individual,

observer).

183. *Id.*

184. *See* O'Sullivan & O'Dwyer, *supra* note 9, at 572-73.

voluntary action and uniform, legally mandated regulation."[185] It is possible that future programs by the United Nations and other supranational organizations may carry more enforcement power, but it seems that the Equator Principles have reached their practical limit in forcing international banks to comply with their social and environmental obligations.

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185. Macve & Chen, *supra* note 11, at 911.