Lessons Learnt From the New Development Bank's Strategic Partnerships

—S. Nanwani[1]

Abstract: *The New Development Bank (NDB), established in 2015, has a unique position in the growing family of multilateral development banks (MDBs) commencing with the World Bank and the four regional MDBs (from 1944 to 1990), to other institutions such as subregional MDBs. NDB is distinctive from the other MDBs as it was founded by five developing countries in equal shares unlike the other major MDBs created by both developed and developing countries. It was operational in July 2015, and has the benefit of gaining from the experiences of the other MDBs in many areas. In the area of partnerships, NDB upfronts in its charter the requirement to cooperate with them and complement their efforts for global growth and development. However, from the projects financed or partnered by NDB with MDBs and other entities such as national development banks, NDB does not appear to be clear on the direction of spearheading its strategic partnerships with these entities. There is room for improvement and this article articulates the problems and challenges faced by NDB, and suggests ways for the institution to move forward to improve its cooperation with MDBs and other institutions and with the public.*

I. Introduction

In this section, I discuss how the New Development Bank[2] (NDB) led by the BRICS-countries (Brazil, Russia, India, China, and South Africa) is unique from the other multilateral development banks (MDBs). The Bank was set up by developing countries as the sole shareholders (20% per country) and maps out its development agenda for infrastructure and sustainable projects in these countries.

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2 New Development Bank (2014).

Since 2021, after 6 years of operations, the membership has expanded to include Bangladesh, UAE, Egypt, and Uruguay, with the Bank reaffirming its "unique position as an institution established by and for emerging market economies and developing countries [EMDCs]" in its General Strategy for 2022–2026[3] (page 6). The NDB flags that it is a showcase of developing member countries' model running on best practices particularly on transparency and accountability.

NDB has embarked on delivering strategic partnerships in its design since its establishment. This strategic partnership stands out as a sterling contribution by NDB among all MDBs. However, the policy is not entirely clear and has ramifications on NDB's functioning in its growth as a full-fledged institution with transparency and accountability as its driving force. In the second section, I discuss the NDB charter[4], policies, website references, Strategy for 2017–2021[5], and the latest Strategy for 2022–2026[6] on how the Bank navigates its direction on strategic partnerships, including the evolution and growth of its strategic policy approach. In the third section, I profile the different types of memorandum of understanding (MOU) entered by the Bank with its partners and discuss them with reference to a study of projects co-financed or partnered by the Bank with other institutions. In the final section, I conclude by framing suggestions and recommendations for NDB to move forward proactively and positively in its focus to promote relationships with financing institutions as part of its mandate to achieve global growth and development.

II. Section I: NDB Charter and other Key Instruments

A. NDB Charter and its Focus on Cooperation with International and other Financial Entities

The purpose of the NDB is to "mobilize resources for infrastructure and sustainable development projects in BRICS and other emerging economies and developing countries", and to do so by "complementing the existing efforts of *multilateral and regional financial institutions* for global growth and development" (Article 1 of the NDB Charter)[7]. Concomitant with its purpose and function, NDB's challenge was how to get up running from zero and how to fulfil its mandate. The NDB Charter further states that the Bank has two main functions in fulfilling its purpose: (i) support public or private projects through loans,

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[3] NDB, 'General Strategy 2022-2026', available at <https://www.ndb.int/wp content/uploads/2022/07/NDB_StrategyDocument_eVersion_07.pdf>.

[4] NDB (2014), 'Agreement on the New Development Bank –Fortaleza, July 15', available at <https://www.ndb.int/wp-content/themes/ndb/pdf/Agreement-on-the-New-Development-Bank.pdf>.

[5] NDB, 'General Strategy 2017-2021' available at <https://www.ndb.int/wp-content/uploads/2017/07/NDB-Strategy-Final.pdf>.

[6] General Strategy 2022-2026 (n 3).

[7] NDB, Charter art 1.

guarantees, equity participation and other financial instruments; and (ii) *cooperate with international organizations and other financial entities*, and provide technical assistance for projects to be supported by the Bank." (emphasis added) (Article 1).[8]

The NDB has viewed itself as innovative, lean, and green (the NDB annual report 2020[9] refers to "innovative", "lean" and "green" 20, 29, and 21 times, respectively in the Bank's operations). In the Bank's annual report 2020[10], the NDB President reinforced the bank's motto that as "as an *innovative institution*, NDB has to permanently be up to the challenge of being *always New*" (page 2, emphasis added) NDB's celebrated its seven years of accomplishments in its press release dated 22 July 2022[11] with a journey of achievements (such as admission of Bangladesh, Egypt, United Arab Emirates, and Uruguay) and has over the past seven years become "an agile, lean, modern, and fit-for-purpose institution".

Right from the outset, cooperation with international organizations and other financial institutions, and complementing the existing efforts of other multilateral and regional financial institutions were and are a key part of the strategic vision and design of the NDB. From the Bank's inception, a Vice President was named for 'Strategy and Partnership, Risk and Research' and handed the responsibility to deliver on forming strategic partnerships as per the Bank's design.

1. *Entities Identified by NDB as "Stakeholders in the Global Development Community"*

Partnerships are pivotal for the NDB as they support the "achievement of NDB's mandate by enhancing the Bank's capacity to mobilize resources for infrastructure and sustainable development projects, while also fostering the exchange of knowledge, human resources and information." Also, the NDB upfronts on its website that it collaborates with a range of "stakeholders in the global development community"[12] it identifies below. The NDB publishes on its website a hierarchy of entities with which it has entered into partnership MOUs and as of 1 August 2022, the Bank has classified 6 types of entities totaling 35 entities.

1. national development banks (5)
2. multilateral development banks (12)
3. commercial banks (10)

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8 ibid.

9 NDB, *Annual Report 2020: Meeting Ever-Evolving Development Challenges*, available at <https://www.ndb.int/annual-report-2020/pdf/NDB%20AR%202020_complete.pdf>.

10 ibid.

11 '*NDB at 7: New Development Bank Celebrates Seven Years of Accomplishments*', NDB (22 July 2022).

12 NDB, Partnerships, available at <https://www.ndb.int/partnership/>.

4. multilateral institutions and initiatives (6)
5. enterprises (1)
6. academia (1)

B. NDB's Design for Forming Partnerships

The design for forming partnerships has taken place in a piece-meal manner instead of a focused attempt to consider the full spectrum of stakeholders right from the outset. The Bank focused on national development banks in the first instance, coming up proactively with a policy as early as 2015 on "Policy on Partnerships with National Development Banks"[13] (approved 28 December 2015). Batista[14], the first Brazilian, vice president of the NDB from 2015 to 2017, who had previously worked actively as a participant for Brazil in the negotiations that led to the founding of the NDB, notes that the NDB had a lot to learn from existing MDBs, as well as from the BRICS countries' national development banks, especially the Chinese and Brazilian ones such as the China Development Bank and the Brazilian Development Bank (BNDES). He notes that the Bank signed "many cooperation and partnership agreements with these institutions, although largely because of NDB's own limitations, [the Bank] often did not take full advantage of this." (Paulo Nogueira Batista Jr. The BRICS and The Financing Mechanism They Created: Progress and Shortcomings[15] (London: Anthem, 2022, page 43) I view geopolitics within the NDB as a principal reason why the Bank did not take full advantage of these agreements, as there was no structured approach in the entering of these agreements which appear to be on ad hoc basis. For example, no MOU has been entered with the Black Sea Trade and Development Bank (BSTDB) which with NDB has a strong connection.

In subsequent years, the NDB approved the following policies for national financial intermediaries and international organizations: (1) the Policy on Loans without Sovereign Guarantee to National Financial Intermediaries[16] (approved 21 January 2016) and (2) the Policy on Loans to International Organizations[17] (approved 12 September 2019). These two policies are not partnership policies, like the partnership policy with National Development Banks, but are related to

[13] NDB, 'Policy on Partnerships with National Development Banks' (2017), available at <https://www.ndb.int/wp-content/uploads/2017/02/Policy-on-Partnerships-with-National-Development-Banks.pdf>.

[14] Paulo Nogueira Batista Jr, '*The BRICS and the Financing Mechanisms they Created*', Anthem Press, 2016.

[15] ibid.

[16] NDB, 'Policy on Loans without Sovereign Guarantee to National Financial Intermediaries' (2016), available at <https://www.ndb.int/wp-content/uploads/2017/02/ndb-policy-on-loans-without-sovereign-gurantee-to-national-financial-intermediaries-20160121.pdf>.

[17] NDB, 'Policy on Loans to International Organisations' (2019), available at <https://www.ndb.int/wp-content/uploads/2019/09/Policy-on-Loans-to-International-Organisations.pdf>.

loans, and these policies will be discussed below in the context of partnership or co-financing below. There are no policies articulated for partnerships with MDBs.

The ADB has a clear policy on development partnerships (OM Section E3, 18 August 2017).[18] This operations manual section specifies that ADB partners with a diverse group of institutions to address the risks and challenges facing the region and to meet the many different requirements for achieving inclusive growth, environmentally sustainable growth, and regional integration. ADB, therefore, continues to strengthen partnerships with multilateral and bilateral institutions, the private sector, and civil society organizations to complement its core activities and other areas of operations through sharing knowledge and expertise. ADB's policy on development partnerships is made publicly available in its Operations Manual[19], a collection of ADB's operational policies known as Bank Policies which are focused statements flowing from the Bank's charter and operational policies adopted by the board of directors, together with Operational Procedures spelling out procedural requirements and guidance on the implementation of policies. The ADB's Operational Manual also includes in its section on partnerships other related policies such as financing partnerships (OM Section E1, 8 January 2020)[20], Japan Bank for Poverty Fund, a fund which the Bank administers (OM Section E2, 1 March 2011)[21], and Promotion of Engagement with Civil Society Organizations (OM Section E4, 19 May 2021)[22].

Other MDBs such as the World Bank and IDB have operational policies and procedures. For example, the IDB in its Operational Policies has general guidelines on the Bank's relationship with other institutions to support the development of its borrowing countries such as Relationship with subregional financial institutions (general policy)[23] and Cooperation with other sources of financing. The subregional financial institutions include the Central American Bank for Economic Integration (CABEI); the Caribbean Development Bank (CDB); and the Financial Fund for the Development of the River Plate Basin (FONPLATA). In view of the marked differences among these institutions, IDB states that its policy is general in nature to establish a new framework for relations, but that the specific strategic framework for conducting operations with each subregional bank will be established separately. In IDB's Cooperation with other sources

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18 Asian Development Bank (ADB), Operational Manual on Loan Administration (28 August 2017), available at <https://www.adb.org/sites/default/files/institutional-document/31483/om-e3.pdf>.

19 ADB, 'Operations Manual', available at <https://www.adb.org/documents/operations-manual>.

20 ADB, 'Operations Manual on Policies and Procedures' (8 January 2020), available at <https://www.adb.org/sites/default/files/institutional-document/31483/om-e1.pdf>.

21 ADB, 'Operations Manual on Bank Policies (BP)' (1 March 2011), available at <https://www.adb.org/sites/default/files/institutional-document/31483/om-e2.pdf>.

22 ADB, 'Operations Manual on Policies and Procedures' (19 May 2021), available at <https://www.adb.org/sites/default/files/institutional-document/31483/om-e4.pdf>.

23 ibid.

of financing[24], the Bank highlights the International Fund for Agricultural Development (IFAD) and other institutions, and states that this policy does not cover parallel financing arrangements worked out directly between financing sources and borrowers for projects or programs also financed by the Bank.

The World Bank also has a Bank policy on co-financing[25] in its Operations Manual[26] related to official co-financing which is defined as that "coming from donor governments and their agencies (mainly through bilateral assistance programs), multilateral financing institutions (principally the regional development banks) and other international institutions." It is interesting that the reference to multilateral financing institutions is principally the regional development banks which means ADB, AfDB, EBRD, and IDB.

In the six years since the start of operations, the NDB has signed more than 30 strategic partnership agreements with other international and national financial institutions, starting with the Bank of China and China Construction Bank in January and June 2016, the Asian Development Bank in July 2016[27] (with a follow-up MOU in June 2022)[28], and the World Bank Group and the Development Bank of Latin America (CAF) in September 2016. However, the NDB's first financing project in 2016 was with other MDBs – the lesser-known International Investment Bank (IIB) and Eurasian Development Bank (EDB) to on-lend for a renewable energy project in Russia.

The NDB's online publication of the MOUs for public access is one example of the Bank's effort to provide some transparency on its operations. In the NDB's "Strategy for 2017-2021"[29], the Bank states that: "Secretiveness is not admissible in a 21st century institution. The Bank is guided by the understanding that information concerning its activities will be made available in a timely manner to the public in the absence of an appropriate reason for confidentiality." (p. 32).

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24 Inter-American Development Bank (IADB), 'Cooperation with Other Sources of Financing', available at <https://www.iadb.org/en/about-us/cooperation-with-other-sources-of-financing%2C6256.html>.

25 'World Bank (WB), Bank Policy on Co-financing', available at <https://ppfdocuments.azureedge.net/9361ee1f-b23b-44a6-92cd-256fbe45468b.pdf>.

26 WB, 'Operations Manual', available at <https://policies.worldbank.org/en/policies/operational-manual>.

27 ADB and NDB, 'Memorandum of Understanding between Asian Development Bank and New Development Bank on General Co-operation' (2016), available at <https://www.adb.org/documents/mou-between-adb-and-ndb-general-co-operation>.

28 ADB and NDB, 'Memorandum of Understanding between Asian Development Bank and New Development Bank on General Co-operation' (2022), available at <https://www.ndb.int/wp-content/uploads/2022/06/MoU-between-ADB-and-NDB2022.pdf>.

29 NDB, General Strategy (2017-2021) (n 5).

C. Need for Partnerships

Why has the NDB arranged these partnerships? NDB's explains on its website that "partnerships support the achievement of NDB's mandate by enhancing the Bank's capacity to mobilize resources for infrastructure and sustainable development projects, while also fostering the exchange of knowledge, human resources and information." NDB's stance on having a prominent Partnerships landing page on its website[30] with lists of current partners and MOUs demonstrates the importance of partnerships to the institution. These partnerships are elements of the growth and evolution story of the NDB to this day. However, despite the strides and information on its website on the list of partnership MOUs, much more needs to be done for affirmative action and implementation.

I examine the strategic decisions and paths that the NDB has taken in forming partnerships with other entities, discussing NDB's General Strategy: 2017 - 2021[31] and General Strategy: 2022 – 2026.[32] I also consider the progression of MOUs signed, and which entities the NDB has actually partnered with to co-finance projects. I focus on MDBs, and to a lesser extent on national development banks (which NDB has been transacting since its lending and without recourse to MDBs). I do not focus here but in a separate article on civil society, an important area, as civil society are important development actors under the Accra Agenda for Action (2008).[33] NDB has paid far less attention on this important area than its continuing focus on national development banks and MDBs, and is only recently making fresh attempts to cover them in its operational activities. NDB however does not include CSOs in its "stakeholders in the global development community".[34]

D. NDB's General Strategy

In June 2017, the NDB approved its General Strategy: 2017 - 2021[35] with a review and update of the Strategy by the end of the third year (2020), and submitted to the Board of Governors for consideration and approval. (There was no update as provided for in the General Strategy: 2017-2021, and the Board of Governors approved the General Strategy: 2022–2026[36] on 19 May 2022 at the Bank's Seventh Annual Meeting[37].) The General Strategy 2017–2021 expressly states that "partnerships are a *strong element of NDB's vision*, and by 2021 the

30 NDB, Partnership (n 12).
31 NDB, General Strategy (2017-2021) (n 5).
32 NDB, General Strategy (2022-2026) (n 3).
33 Accra Agenda for Action (2008).
34 NDB, General Strategy (2022-2026) (n 3).
35 NDB, General Strategy (2017-2021) (n 5).
36 NDB, General Strategy (2022-2026) (n 3).
37 ibid.

Bank will have implemented agreements for joint financing activity, knowledge and personnel exchange with a variety of multilateral development finance institutions, as well as with national development and commercial banks of BRICS and other member countries." (emphasis added).

The NDB Strategy for 2017–2022[38] provides that the Bank will "constructively engage [with] the international community as an independent voice on development trends and practices. As a new institution, NDB has much to learn from the wealth of experience of multilateral and bilateral development institutions, as well as civil society and academic organizations." (page 7) Partnerships with international development organizations, national development banks, and commercial banks allows the Bank "to tap into the expertise of other institutions, strengthen its capacity to assess and implement projects and build financial packages able to bring projects to meaningful scale" and the "Bank is endeavoring to build a relationship of mutual trust and cooperation with non-governmental organizations, think tanks and universities, particularly those closely connected to infrastructure and sustainable development issues." (pages 4-5).

The NDB General Strategy: 2022–2026[39] was approved on 19 May 2002 but posted on the Bank's website on 1 July 2002. This updated strategy's overarching objective is to support the Bank's effectiveness in fulfilling its mandate, after the foundations laid down for the Bank in first five-year general strategy 2017 to 2021. In this new strategy, the Bank will strengthen partnerships in the following ways: (i) co-finance 20% of the projects approved over the strategy cycle with "peer" MDBs (the term "partner" MDBs is also used analogous to "peer MDBs"); (ii) intensify its engagement with a range of financial institutions by further leveraging their expertise, co-financing projects, and cooperating in other areas such as treasury and financial markets; (iii) strengthen institutional relationships with CSOs and gathering insights from their knowledge, experience, and perspectives. (page 27).

III. Section II: Memoranda of Understanding

I begin this section with the recent developments in the NDB-MOU of 23 June 2002 before I discuss the MOUs entered into by NDB with the other MDBs. The NDB-ADB MOU of 4 July 2016 had expired and a new MOU was in effect in 2022. The MOUs with the other MDBs are still existing and valid.

[38] NDB, General Strategy (2017-2021) (n 5).
[39] NDB, General Strategy (2022-2026) (n 3).

A. New NDB-ADB MOU Dated 23 June 2022

In 2016, NDB entered into an MOU with ADB dated 4 July 2016[40] (before the NDB Strategy for 2017–2021). On 23 June 2022, NDB entered into another MOU with ADB[41] as the 4 July 2016 NDB-ADB MOU was valid for five years till 16 September 2021. The 4 July 2016 NDB-ADB MOU was an MOU on "general cooperation", and the new MOU accentuated the "general cooperation" citing that their convictions that the parties "will continue to mutually benefit through cooperation at the strategic, operational and technical levels on the basis of complementarity, institutional strengths and comparative advantages" (Preamble). The purpose of both MOUs is the same – to develop and facilitate collaboration between the two parties "in matters of common interest and to set out areas for strategic cooperation towards the achievement of their common objectives". (Article 1 in both MOUs).

2. *Expansion of Areas of Cooperation in the New NDB-ADB MOU Dated 23 June 2022*

There is an expansion of areas of cooperation (Article 2 in the earlier MOU, and Article II in the latter MOU) with more clarity in the latter MOU, for example, (i) specifying a clearly-delineated list of collaboration in areas of strategic importance, "such as fostering … sector-level collaboration in areas including … sustainable urban development; social infrastructure, and digital infrastructure" (the renewed MOU included the last three areas); and (ii) the affirmative language used in the renewed MOU – "identify opportunities" to collaborate on early identification, preparation, co-financing and other forms of joint participation in financial assistance for infrastructure and sustainable development projects in countries of mutual interest, subject to geographic restrictions of the Parties' activities (in contrast to the elusive language "to consult on areas of collaboration on activities, within the mandate of both Parties, with a view to possible co-financing opportunities and foster integration and connectivity" in the earlier MOU).

There are clear provisions in the latter MOU which were not spelt out in the earlier MOU such as monitoring, review, and consultation mechanisms (Article IV) where the Parties recognize the importance of periodic consultations to review the planning, implementation, and outcomes of their cooperation activities as well as discussing results, challenges, and opportunities. Another clear provision is that where the Parties are involved in publicized joint cooperative activities, the Parties intend to follow the following approach [that] there will be public acknowledgement of the role and contribution of each Party to the project in all public information documentation related to such cooperation (Article XII).

[40] 'MoU between ADB and NDB' (n 27).

[41] 'MoU between ADB and NDB' (n 28).

B. NDB's MOUs with WBG, EBRD, EDB, IIB, AIIB, IDB, and AFDB

The MOUs entered by NDB with the other MDBs such as the World Bank Group[42], EBRD[43], EDB[44], IIB[45], AIIB[46], IDB (and IDB Invest)[47], and AfDB[48], are still existing and valid (there has been no official announcement on NDB website that the MOU is no longer in force and the assumption is made that that these MOUs are still existing and valid). In the case of the World Bank Group (defined as IBRD, IDA, IFC, and MIGA in the MOU), the MOU[49] between the parties was dated 9 September 2016 and the MOU is in force indefinitely unless terminated by either parties (Article VII.2). With reference to EBRD, the MOU[50] was signed 1 April 2017 and the MOU enters remains in effect until either party notifies the other party in writing of its intention to terminate it (Article 7.2). On 1 April 2017, NDB also entered into an MOU on General Cooperation with EDB and an MOU on Strategic Cooperation with IIB. The MOU with EDB[51] remains in effect for three years from the date of signature and will be automatically renewed for successive three (3) year periods, unless a party proposes to terminate it (Section 12). The duration of the MOU with IIM[52] is different from that with EDB, as the MOU will remain in force indefinitely unless terminated by either party giving one month written notice of its intention to terminate it (Article 11).

NDB also signed an MOU with AIIB[53], its sibling MDB, operational in 2016 and also headquartered in the same country, on 1 April 2017. This MOU

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42 NDB and WB, 'Memorandum of Understanding between the New Development Bank and the World Bank Group' (New Development Bank, 2016), available at <https://www.ndb.int/wp-content/uploads/2017/01/MOU-NDB-WBG.pdf>.

43 'European Bank for Reconstruction and Development (1991)', available at <https://www.ebrd.com/home>.

44 'Eurasian Development Bank (2006)', available at <https://eabr.org/en/>.

45 'International Investment Bank (1970)', available at <https://iib.int/en>.

46 'Asian Infrastructure and Investment Bank (2016)', available at <https://www.aiib.org/en/index.html>.

47 'Inter-American Development Bank (1959)', available at <https://www.iadb.org/en>.

48 'African Development Bank Group (1994)', available at <https://www.afdb.org/en>.

49 MoU between NDB and WB (2016).

50 NDB and EBRD, 'Memorandum of Understanding between the New Development Bank and European Bank for Reconstruction and Development' (New Development Bank, 2017), available at <https://www.ndb.int/wp-content/uploads/2017/04/MOU-with-EBRDApril-2017.pdf>.

51 NDB and EDB, 'Memorandum of Understanding between the New Development Bank and the Eurasian Development Bank' (New Development Bank, 2017), available at <https://www.ndb.int/wp-content/uploads/2017/04/MOU-with-EDBApril-2017.pdf>.

52 NDB and IIB on Strategic Cooperation, 'Memorandum of Understanding between New Development Bank and International Investment Bank on Strategic Cooperation' (New Development Bank, 2017), available at <https://www.ndb.int/wp-content/uploads/2017/04/MOU-with-IIBArpil-2017.pdf>.

53 NDB and AIB, 'Memorandum of Understanding between New Development Bank and Asian Infrastructure Bank' (New Development Bank, 2017), available at <https://www.ndb.int/wp-content/uploads/2017/04/MOU-with-AIIBApril-2017.pdf>.

stated that it would remain in force indefinitely unless terminated by either party with a one-month written notice of its termination. For IDB (and IDB Invest)[54], NDB also entered into an MOU on General Cooperation dated 19 April 2018, and the MOU remains effective for three years, automatically renewable for successive three-year periods, unless a party proposes to terminate it (Section 8.1). For AfDB[55], the last RDB that NDB had an agreement with in October 2019, the MOU's duration is to remain in effect for five years from the date of signature, renewable with mutual agreement of the parties (Section 8.1).

C. NDB's Partnerships with National Development Banks and National Commercial Banks

In 2015, the NDB adopted its Policy on Partnerships with National Development Banks for the express purpose of allowing the Bank "to benefit from their experience, especially in the Bank's implementation and consolidation phases" (section A). The MOU provides the different types of cooperation and "interaction in the areas of infrastructure and sustainable development, as well as other areas of mutual interest" ranging from financing and co-financing of projects, public-private partnerships (PPPs) at sovereign and sub-sovereign levels, information sharing on potential projects and mechanisms for project monitoring, guarantees and counter-guarantees to secure obligations (section D).

NDB's relationships with national entities (development banks and commercial banks) was evident as the institution's charter was inbuilt for BRICS countries and these self-consciously catered first to the BRICS founding member-nations using them as conduits (implementing agencies, borrowers, and executing agencies). Other answers lie in the fact that the first Vice President for Strategy and Partnerships was a Brazilian national and they would have had pre-existing professional connections and contacts with BNDES; the NDB head office is located in Shanghai and cooperating with Chinese financial institutions played to locational advantages. NDB commenced its lending projects with national entities in stark contrast with AIIB which from its outset partnered with other MDBs notably the World Bank and ADB on its lending projects. AIIB's focus was international, in contradistinction to NDB, with its global membership of many developing countries worldwide in its 57 founding members in 2015 before it commenced business in January 2016.

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[54] NDB, IADB, and IDB Invest, 'Memorandum of Understanding among the New Development Bank, the Inter-American Development Bank, and IDB Invest' (New Development Bank, 2018), available at <https://www.ndb.int/wp-content/uploads/2018/09/MOU-with-IDB-IDB-Invest-signed.pdf>.

[55] NDB and AfDB, 'Memorandum of Understanding between the New Development Bank and the African Development Bank' (New Development Bank, 2019), available at <https://www.ndb.int/wp-content/uploads/2019/11/MOU_AfDB_Memorandum-of-Understanding-between-the-New-Development-Bank-and-the-African-Development-Bank.pdf>.

In the period since its opening, the NDB has, in addition to the Brazilian and Chinese institutions above, also entered into partnerships with other entities from Indian, Russian, and South African member countries. These include the State Bank of India (2018), the Standard Bank of South Africa (2016), the Development Bank of Southern Africa (2018), and Russian Railways (2017). The NDB has co-financed projects or partnered projects with the following BRICS-entities which include Financing of Renewable Energy Projects and Associated Transmission[56] (Brazil, 2016, BNDES); Locomotive Fleet Renewable Program[57] (Russia, 2019, Russian Railways); Putian Pinghai Bay Offshore Wind Power Project[58] (China, 2016, Chinese banks); and Greenhouse Gas Emissions Reduction and Energy Sector Development Project[59] (South Africa, 2018, Development Bank of Southern Africa [DBSA]).

In these four projects, it is interesting that the entities were directly involved in the projects in different roles depending on the nature of the project – BNDES as borrower and implementing agency; the Joint Stock Company Russian Railways as borrower and implementing agency; the Chinese banks as co-financiers (together with NDB as the lender of the loan, and Fujian Investment and Development Group Co. Ltd as implementing agency); and the DBSA as the borrower and implementing agency.

The NDB worked with the lesser known MDBs to provide the first project financing in Russia, the Bank's fourth approved project in 2016, namely with the IIB and the EDB. These two banks have strong links to Russia. The IIB[60] was established in 1970 to serve the Soviet bloc countries, with Russia as the largest shareholder (47%) and the main champion. The IIB underwent large-scale reforms in 2012 to attempt to lessen the impression that the Bank is Russian-controlled and in 2019, the IIB headquarters was shifted from Moscow to Budapest, Hungary. The IIB has 10 member countries: Bulgaria, Cuba, Czech Republic, Hungary, Mongolia, Romania, Russia, Serbia, Slovakia, and Vietnam. The EDB was founded in 2006 by Russia and Kazakhstan, headquartered in Almaty, Kazakhstan, and has six member countries located in Asia and Europe, primarily in the former USSR: Armenia, Belarus, Kazakhstan, Kyrgyzstan, Russia, and Tajikistan. Russia is the largest shareholder (65.97%) followed by Kazakhstan (32.99%).

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56 NDB, 'Financing of Renewable Energy Projects and Associated Transmission' (2016), available at <https://www.ndb.int/wp-content/uploads/2021/09/16BR01-BNDES-Energy-Approved-Project-Summary.pdf>.

57 NDB, 'Locomotive Fleet Renewal Program' (2019), available at <https://www.ndb.int/wp-content/uploads/2021/09/19RU02-RZD-Approved-Project-Summary.pdf>.

58 NDB, 'Putian Pinghai Bay Offshore Wind Power Project' (2016), available at <https://www.ndb.int/wp-content/uploads/2022/06/16CN02-Pinghai-Approved-Project-Summary-29062022.pdf>.

59 NDB, 'Greenhouse Gas Emissions Reduction and Energy Sector Development Project' (2018), available at <https://www.ndb.int/wp-content/uploads/2021/09/18ZA02-DBSA-Approved-Project-Summary.pdf>.

60 IIB, 1970 (n 45).

The Two Loans to EDB and IIB for Nord-Hydro project[61] approved in July 2016 had a curious arrangement. The NDB provided two loans to support EDB and IIB, as borrowers, to onlend to renewable energy projects, with Nord Hydro Bely Porog as the implementing agency. Under this project, the two hydroelectric power plants in Karelia in Russia would be financed through IIB and EDB, which was controlled by Russia. Batista Jr. notes that the "unusual format of the first Russian project" as the country's national development bank, Vnesheconombank (VEB), was on the list of entities sanctioned by the United States and other countries, which resulted in NDB not engaging with VEB but adopting a circuitous route to "avoid falling victim to Western sanctions"[62] (page 41). Russia's annexation of Crimea was met with no new investments by EBRD since 2014[63] and the World Bank Group has not approved any new loans to or investments in Russia since 2014[64]. IIB in its press release stated that the "funding under the first NDB project in Russia has several unique features for the IIB. It involves the first credit line for the IIB from another multilateral development institution, and will become its most long-term funding up to date" as IIB would open a credit line for Nord Hydro JSC, a management hydro-generating company established to implement a project to develop and restore small hydro-generation facilities in the Russian Federation, in Russian roubles and the IIB covered associated project risks in assisting NDB develop its operations in the Russian Federation[65].

The MOUs with these two MDBs were signed in 2017, after the project was approved. This would indicate that there is no compelling need for an MOU to have an arrangement beforehand, though it does help to enter into an MOU as the agreement sets out clear understandings on what parties agree on. I surmise that it might have been a bit too early for NDB to have an agreement with these institutions as MOUs were entered into with the more familiar MDBs such as the World Bank and ADB in 2016, and the agreements with these two lesser-known institutions were entered into in 2017. It is interesting that in the MOUs with these two institutions, there was specific wording on further arrangements – not inserted in the MOUs with the more familiar and traditional MDBs (World Bank and the four regional development banks). For example, in NDB's MOU with EDB, the wording on further arrangements in article 5 reads: "The Parties may conclude subsidiary agreements or arrangements relating to specific areas of co-operation. These agreements or arrangements will include the nature, scope,

[61] NDB, 'Two Loans to EDB and IIB for Nord-Hydro' (2016), available at <https://www.ndb.int/wp-content/uploads/2017/12/country-summary-disclosure_-EDB-IIB-Loans-Russia.pdf>.

[62] Batista (n 14).

[63] EBRD, 'The EBRD in Russia', available at <https://www.ebrd.com/russia.html>.

[64] WB, 'World Bank Group Statement on Russia and Belarus', March 2nd 2002, available at <https://www.worldbank.org/en/news/statement/2022/03/02/world-bank-group-statement-on-russia-and-belarus>.

[65] IIB, '1st Annual Meeting of BRICS' New Development Bank – IIB contributes to the implementation of NDB's first project in Russia', July 2nd 2016, available at <https://iib.int/en/articles/test>.

fees, and costs, as agreed by the Parties." This specific arrangement is not included in NDB's MOU with EBRD, NDB's MOU with EIB, and NDB's MOU with AIIB which was also signed on the same day in April 2017.

It is interesting to note that the title of the NDB-IIB agreement is "Memorandum of Understanding between New Development Bank and International Investment Bank on Strategic Cooperation"[66], and the NDB-EDB signed an "MOU on "General Cooperation."[67] In comparison, the NDB-EBRD agreement has the rather generic title of "Memorandum of Understanding between the New Development Bank and the European Bank for Reconstruction and Development."[68] A sense of urgency or priority can be interpreted from the words "strategic cooperation" in the title of the NDB-IIB MOU, and from the wording in the NDB-EDB MOU calling for cooperation on "early identification, preparation, co-financing, and other forms of joint participation in financial assistance for sustainable development and infrastructure projects in countries of mutual interest."

Since the 2016 project where both IIB and EDB were borrowers for the Nord-Hydro project, there is subsequent project in NDB's list of approved projects where IIB has been a borrower of an NDB project, but EDB has been a borrower and implementing agency for the following NDB projects: Development of Renewable Energy Sector in Russia Project[69] approved on 19 September 2019; Toll Roads Program in Russia[70] approved on 29 September 2020; Water Supply and Sanitation Program in Russia[71] also approved on 29 September 2020. In the first project, EDB, a key player in financing of the energy sector in Russia, will use the funds for on-lending to its identified sub-projects including wind, solar, and small hydropower (<25 MW) energy technologies, to achieve the project objective in facilitating investments in renewable energy generation plants that will contribute to Russia's power generation mix in line with the country's Energy Strategy 2030, and to avoid the nation's carbon dioxide emissions. In the second project, the EDB will use the funds to finance sub-projects meeting the selection criteria agreed with NDB, and these sub-projects, which typically will be structured based on PPP arrangements, will involve construction of new toll roads or upgrade of existing toll roads in the Russian Federation. In the third project, EDB will use the funds to finance water supply and sanitation sub-projects meet-

66 MoU between NDB and IIB (n 52).
67 MoU between NDB and EEB (n 45).
68 MoU between NDB EBRD (n 50).
69 NDB, 'Development of Renewable Energy Sector in Russia Project' (2019), available at <https://www.ndb.int/wp-content/uploads/2022/03/19RU01-EDB-Renewables-Approved-Project-Summary-revised-250322.pdf>.
70 NDB, 'Toll Roads Program in Russia' (2020), available at <https://www.ndb.int/wp-content/uploads/2022/02/20RU03-EDB-Toll-Road-Approved-Project-Summary.pdf>.
71 NDB, 'Water Supply and Sanitation Program in Russia' (2020), available at <https://www.ndb.int/wp-content/uploads/2022/02/20RU04-EDB-Water-Approved-Project-Summary.pdf>.

ing selection criteria agreed with NDB in line with the program which is aimed at improving environmental protection across Russia as set out in the National Project "Ecology" through reconstruction of water supply and sanitation facilities in different regions of the country.

Additionally, the Black Sea Trade and Development Bank[72], also dominated by Russia, has been both borrower and implementing agency in the Russian Maritime Sector Support Program[73] which was approved by on 29 September 2020. NDB's list of 15 approved projects for Russia as of July 2022 5 out of the 15 projects has IIM, EDB, and BSTDB as borrowers, with EDB having the lion's share. The BSTDB is an international financial institution commenced operations in 1999, and is headquartered in Thessaloniki, Greece. It comprises the following 11 member nations: Albania, Armenia, Azerbaijan, Bulgaria, Georgia, Greece, Moldova, Romania, Russia, Türkiye, and Ukraine with Russia, Türkiye, and Greece having the largest shareholding each (16.5%). The NDB does not have an MOU with BSTDB, though it is noted that it has an MOU with 12 other MDBs in its list of MOUs with MDBs. This program will contribute to an increase in capacity and efficiency of sea and inland ports and passenger terminals, as well as of cargo and passenger vessel fleet, and BSTDB will on-lend NDB funds to port owners and operators, as well as to maritime companies.

The BSTDB has been included in the discussion for completeness, with reference to these MDBs serving as borrowers and implementing agencies for projects, which is unusual in MDB lending operations. From my study, I find that this modality of using IIM, EDB, and BSTDB was used for Russia and not for the other four countries in the BRICS. A review of the Project Summary for Public Disclosure for these projects and BSTDB's press release on signing of the project[74] involving these banks reveal that they had a crucial role to play as a development bank such as the geopolitics of financing (IIM and EDB for the Nord-Hydro project); the prior active role of EDB involved in financing toll roads in the country (EDB Toll Roads Program in Russia); BSTDB's mandate in supporting seaport transport infrastructure essential for the economic growth and regional cooperation.

The traditional mode of partnering by MDBs is through co-financing, joint or parallel, and accompanied by cooperation in other areas such as staff secondment, sharing of information on possible projects for cooperation, and other related areas. The typical scenario is where the MDB in its co-financing

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72 'Black Sea Trade and Development Bank (1999)', <https://www.bstdb.org/>.

73 NDB, 'Russian Maritime Sector Support Program (2020)' , available at <https://www.ndb.int/project/russia-russian-maritime-sector-support/.

74 BSTD, 'New Development Bank and Black Sea Trade and Development Bank Cooperate to Support the Russian Maritime Sector', 3rd February 2021, available at <https://www.bstdb.org/news-and-media/press-releases/press-releases_5734>.

operations or partnerships refers to the resources provided by the financing partner(s) as co-financing, which is the third-party financing necessary to deliver the outcome in the design and monitoring framework of the sovereign project. For example, in ADB, a "financing partnership" refers to an arrangement whereby ADB and one or more partners jointly provide resources in the form of finance, risk-sharing capacity, or in-kind contributions towards common development objectives. (ADB OM Section E1, para. 2).[75]

An overall view of NDB's design of its partnerships offers other interesting insights. In the case of NDB's MOU with EBRD, although the parties "acknowledge the benefits for their countries of operations of investment and co-financing by multilateral development banks" and "endeavor to identify projects and activities on which they could collaborate and which they could potentially co-finance in common countries of operations", the realization is at best a "wish list" given that the MOU was signed in 2017, and at that time Russia was the only common country of operations between these two institutions, but Russia was already not receiving new investments from EBRD since 2014. Also as from April 2022, the EBRD's Board of Governors has decided to suspend Russia's access to the Bank's resources under Article 8.3 of the EBRD Charter, though it continues to be a shareholder. EBRD has also taken steps to close its offices in Moscow and Minsk with the war in Ukraine as of February 2022. I contend that there has formal suspension of existing and potential operations by these two institutions in Russia.

In March 2022, the NDB issued the following statement, under Article 21 of the NDB Charter, Operational Principles: "In light of unfolding uncertainties and restrictions, NDB has put new transactions in Russia on hold. NDB will continue to conduct business in full conformity with the highest compliance standards as an international institution."[76] The "statement" is couched in somewhat cryptic terms referring to "unfolding uncertainties and restrictions" in contradistinction to the EBRD's definitive decisions by invoking its charter provision of suspension of Russia's access to the Bank's resources, and closing its offices in Russia.

As the NDB turns to working more on co-financed projects with other MDBs, under its existing Bank Strategy 2022–2026, what stands in the way of the initiatives singled out in this strategy with priorities on climate-smart, disaster resilient, technology integrated, and inclusive projects for sustainable development? There is little doubt that the current situation of Russia's invasion of Ukraine starting in February 2022 hinders any plans for co-financing projects in Russia for the NDB and the EBRD. In terms of other possibilities for NDB-EBRD co-financing, it is useful to note that in late 2021, the NDB admitted new

75 ADB, 'OM Section E1 (2023)', available at <https://www.adb.org/sites/default/files/institutional-document/31483/om-e1.pdf>.
76 Art 21 NDB Charter (n 7).

members, Bangladesh, the UAE, Uruguay, and Egypt. Among these countries, Egypt is (so far) the lone "common country of operations" for the NDB and the EBRD. In other words, Egypt's new membership in the NDB could open the way for the first NDB-EBRD co-financed projects in the future that could possibly be included as NDB aims under its existing Bank Strategy 2022-2026 to deepen its cooperation with MDBs and other institutions to co-finance 20% of the projects approved over the strategy period with partner MDBs.

D. NDB Co-Financing or Partnering Projects

NDB co-financing or partnering projects in India, together with the ADB and the AIIB, provides information on opportunities for spearheading its strategic directions with ADB and AIIB. Two years after its establishment, there is a now history of NDB co-financing or partnering projects in India, together with ADB and AIIB. India has been the conduit for enabling NDB to seek co-financing with other MDBs, with reference to ADB and AIIB. India has a long history of borrowing from ADB, and is *the* leading country-borrower from the AIIB. India has been the 'comfortable zone' for the NDB to work together with other MDBs, especially ADB and AIIB, from within the Asian region to pursue co-financing. After India, China comes next with NDB co-financing with AIIB (there is none yet with ADB). With Bangladesh as a new NDB member, opportunities may abound for NDB co-financing with ADB and AIIB. ADB Fact Sheet for Bangladesh (April 2022) states ADB is a key source of external assistance for Bangladesh, providing $2 billion on average annually during 2016–2021.[77] With Egypt and Uruguay as new NDB members, there are more opportunities for NDB co-financing with other MDBs such as World Bank, AIIB, and EBRD (Egypt is an EBRD country of operation).

In November 2018, NDB approved the Mumbai Metro Rail Project[78] with a loan of USD 260 million, with USD926 million from "Other Banks" and USD1,314 million from Mumbai Metropolitan Region Development Authority (MMRDA) in the USD2, 500 million project. The Project, through financing the construction of three metro lines in Mumbai with the total length aggregate about 58 km, addresses the transport challenges and to enhance the city's public transportation capacity. The NDB loan will be used by the Government of India for on-lending to Government of Maharashtra (Mumbai is the capital state of Maharashtra) for financing the equipment and system components of the Project. The "Other Banks" listed in the NDB Project Summary for Public Disclosure is actually a bank, not more than one bank, and it is the ADB.

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77 ADB, 'Asian Development Bank Member Fact Sheet'–Bangladesh, available at <https://www.adb.org/sites/default/files/publication/27753/ban-2021.pdf>.

78 NDB, 'Mumbai Metro Rail Project' (2018), available at <https://www.ndb.int/wp-content/uploads/2021/09/18IN04-Mumbai-Metro-Approved-Project-Summary.pdf>.

In the Delhi-Ghaziabad-Meerut Regional Rapid Transit System Project[79], approved by NDB in June 2020, NDB's Project Summary for Public Disclosure[80] states that the Project will be co-financed under "parallel financing arrangements with Asian Development Bank (loan of USD 1,049 million) and Asian Infrastructure Investment Bank (loan of USD 500 million)" with NDB's loan of USD500 million for the USD 3,759 million project. The project information document from NDB on this project is clear on the financing and the type of financing and goes on to state that environmental and social (E&S) "mitigation measures and resettlement framework have been developed in Project E&S studies in line with country systems and Asian Development Bank's safeguard requirements, which materially comply with NDB's ESF (Environmental and Social Framework).

The clarity of NDB's co-financing and its partnerships with both ADB and AIIB are evident in this project financing in ADB's project document (Report and Recommendation of the President to the Board of Directors[81]). Unfortunately, NDB's Project Summary for Public Disclosure does not give precise information on what NDB is financing.[82] It is the ADB's project document that gives the information, which is that NDB financing covers part of rolling stock, signal train control and telecommunication systems, construction of multi-storied staff quarters, and connectivity from Mathura road to Jangpura stabling yard complex. Interestingly, AIIB's co-financing in this project is joint, with ADB, with the result that both ADB and AIIB finance a common list of goods, works, and services required for the project. Under partial administration, the funds provided by AIIB, as financing partner, are not transferred to ADB but it will provide a range of services, including procurement and disbursement supervision. As ADB is administering the AIIB loan, it obtains approval for providing such administration from the Board of Directors in the project document. In cases of parallel co-financing, no such approval is required as ADB is not performing any administration service.

It would be helpful if NDB is clear on the kind of co-financing carried out with other MDBs in projects. The co-financing could be joint or parallel, where joint refers to the financing institutions jointly financing the same works, goods or services according to the portions agreed by them with the borrowing country and where parallel refers to the financing institutions financing discrete project activities, such as one institution financing consulting services and another

79 'Development Bank, Delhi -Ghaziabad-Meerut Regional Rapid Transit System Project' (2020), available at <https://www.ndb.int/project/india-delhi-ghaziabad-meerut-regional-rapid-transit-system-rrts-project/>.

80 ibid.

81 ADB, 'Report and Recommendation of the President to the Board of Directors' (July 2020), available at <https://www.adb.org/sites/default/files/project-documents/51073/51073-002-rrp-en.pdf>.

82 NDB, Project Summary for Public Disclosure.

financing construction works. There is no project document disclosed on the NDB's website.

In the Delhi-Ghaziabad-Meerut Regional Rapid Transit System Project, NDB stated in its Project Summary for Public Disclosure[83] that there is parallel financing but it is not stated the specific project activities that NDB is financing. It is ADB's project document (Report and Recommendation of the President) that makes it clear what NDB is financing: part of rolling stock, signal train control and telecommunication systems, construction of multi-storied staff quarters, and connectivity from Mathura road to Jangpura stabling yard complex. Information on NDB's involvement in the project is gathered from another financing institution (ADB) and it would have been helpful if more information is provided in NDB's documents.

Where joint co-financing involves application of environmental and social safeguards, it is important that the institutions coordinate upfront the applicable standards to be governed (such as the lead co-financier's policy of environmental and social safeguards) or standards that are acceptable to the co-financing institutions. In the case of the Delhi-Ghaziabad-Meerut Regional Rapid Transit System Project, both ADB and AIIB jointly financed a common list of goods, works, and services required for the project and it was made clear that universal procurement applied to the joint co-financing. ADB has its own procurement rules (different from AIIB) where there is usual eligibility restrictions from member countries only. However, ADB had obtained waiver from its Board of Directors (which approves the loan) waiver of member country procurement eligibility restrictions for universal procurement to apply.

Co-financing, whether joint or parallel, is possible with the rider that the arrangements are spelt out on the type of co-financing (joint or parallel), the rules to be followed such as application of environmental and social safeguards, and procurement arrangements which must be acceptable to the institutions given their policies and procurement restrictions. Where administration services are provided by one institution to another, there has to be agreement reached by these institutions on the provision of these services to ensure effective project implementation. Appropriate arrangements would also have to be made with the borrowing country to ensure that all parties involved in the project are clear on the nature and execution of the project activities.

The Paris Declaration on Aid Effectiveness (adopted in 2005 by over 100 countries and development organizations, including MDBs) emphasizes the importance of coordination, harmonization, and alignment of development efforts among donors and development partners[84]. In the Accra Agenda for Action

[83] ibid.

[84] Paris Declaration on Aid Effectiveness (2005).

(adopted in 2008), the multilateral institutions such as World Bank, EBRD, and ADB agreed to "deepen our engagement with CSOs as independent development actors in their own right whose efforts complement those of governments and the private sector" (para 20)[85]. The Busan Partnership for Effective Development Cooperation (adopted in 2011) further built on the Paris Declaration by providing a more comprehensive framework for development cooperation including co-financing among development partners.[86] The United Nations Sustainable Development Goals (2015) also provide a global framework for development cooperation and financing.[87] With new multilateral institutions in place after 2015 such as NDB and AIIB, the need for the banks to have principles and guidelines for co-financing projects with other development partners is critical so that there is tailoring to suit the institutional contexts and also for effective participation with other donors for enhanced delivery of development outcomes in co-financed projects.

E. NDB's 79 Approved Projects and the Projects Co-Financed with ADB and AIIB

NDB has 79 approved projects as of 1 August 2022, of which India has 18 projects, Russia 15, and China 17 projects. Of India's 18 projects, 3 have had active co-financing discussions with ADB, and 2 have firmed up as mentioned above. One India project has both co-financing partnerships with ADB and AIIB. On China, NDB has one project co-financed with AIIB – the Beijing Gas Tianjin Nangang LNG Emergency Reserve Project[88] approved in August 2020. Under this project, NDB provided a loan of EUR 436 million, with AIIB providing a co-financing loan of USD500 loan. A closer look at the AIIB loan for USD500 million for this project reveals that this project was approved in 2019 (Beijing-Tianjin-Hebei Low Carbon Energy Transition and Air Quality Improvement Project, Project Summary Information[89]). The Project consists of the following two parts: (1) construction of LNG receiving, storage and regasification facilities and (2) construction of unloading wharf. The AIIB loan was used only for part 1 as stated in AIIB's Project Document (19 December 2019)[90] and the NDB loan was used for part 2 which included the construction of a working platform, 4 mooring dolphins and 6 mooring cleats.

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[85] Accra Agenda for Action (2008).

[86] Busan Partnership for Effective Cooperation (2011).

[87] United Nations Sustainable Development Goals (2015).

[88] NDB, 'Beijing Gas Tianjin Nangang LNG Emergency Reserve Project' (2020), available at <https://www.ndb.int/wp-content/uploads/2022/01/20CN03-Beijing-Gas-Approved-Project-Summary-04012022.pdf>.

[89] AIIB, Beijing-Tianjin-Hebei Low Carbon Energy Transition and Air Quality Improvement Project (2019), available at https://www.aiib.org/en/projects/approved/2019/_download/china/BTH-Low-Carbon-Project-ESIAESMP.pdf.

[90] ibid.

There have been other NDB projects co-financed with the World Bank and AfDB such as the Battery Energy Storage Project in South Africa[91] approved in December 2019. The Project Summary for Public Disclosure gives information that NDB provides a loan amount of up to USD 400 million with co-financing from two MDBs – the World Bank and AfDB – without specifying the mode of co-financing (joint or parallel), and the AfDB appraisal report for this project[92] (October 2021) provides added information that the AfDB and NDB have agreed through a Memorandum of Understanding (MOU) to apply World Bank Procurement Rules and Regulation for Phase I of the project (page 16) and that AfDB, the World Bank, NDB and Eskom (the borrower and project implementing agency) will jointly prepare a project completion report upon completion of the project (page 10).

The Lesotho Highlands Water Project Phase II[93] was approved by NDB in March 2019 with a loan amount of ZAR 3.2 billion, and there was co-financing from AfDB. The Environmental Protection Project for Medupi Thermal Power Plant[94] in South Africa is also funded by NDB approved in March 2019 with a loan amount of USD480 million with Eskom Holdings SOC Ltd as the borrower and implementing agency. The loan amount is about 10% of the total project cost, and this project has had funding from several co-financiers, including the World Bank in in 2010 and AfDB in 2008 and 2009. The Brazil Emergency Assistance Program for Economic Recovery[95] was approved by NDB in December 2020 with a loan amount of USD1 billion to support the recovery of the Brazilian economy, with IDB as co-financier. This was a COVID-19 emergency loan program financed by both NDB and IDB with Brazil as the borrowing country and BNDES as the implementing agency. The projects listed above indicate other MDBs as co-financiers, such as World Bank and other entities like AfDB and IDB. Also, as indicated in the Medupi Thermal Power Plant project, the co-financing from other entities such as the World Bank and AfDB had been much earlier before NDB's establishment, due to the scale of the project. I focus on the ADB and AIIB as these provide contemporaneous co-financing.

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91 NDB, 'Battery Energy Storage Project' (2019), available at <https://www.ndb.int/wp-content/uploads/2021/09/19ZA05-Eskom-Battery-Project-Approved-Project-Summary.pdf>.

92 AfDB, *South Africa- Eskom Distributed Battery Energy Storage Project- Project Appraisal Report* (November 2021), available at <https://www.afdb.org/en/documents/south-africa-eskom-distributed-battery-energy-storage-project-project-appraisal-report>.

93 NDB, 'Lesotho Highlands Water Project Phase II' (2019), available at <https://www.ndb.int/wp-content/uploads/2021/09/19ZA01-LHWP-II-Approved-Project-Summary.pdf>.

94 NDB, 'Environmental Protection Project for Medupi Thermal Power Plant' (2019), available at <https://www.ndb.int/wp-content/uploads/2021/09/19ZA02-Eskom-Environment-Protection-Approved-Project-Summary.pdf>.

95 NDB, 'Brazil Emergency Assistance Program for Economic Recovery' (2020), available at <https://www.ndb.int/wp-content/uploads/2022/06/20BR03-CEPL-II-Approved-Project-Summary_29MAR2022.pdf>.

IV. Section III: Directions, Suggestions And Recommendations

The NDB is applauded for its innovativeness in promoting partnerships with a broad range of development actors. It upfronts this promotion in its Charter and in its Strategies. However, the machinery to effect its promotion of partnerships with MDBs is not effective and in full swing. The vigor of the NDB is manifest in its co-financing or partnering with national development banks and national commercial banks. That vigor falls short in its effective partnering with other MDBs.

The preference for the NDB was to co-finance or partner projects with national development banks and national commercial banks. A critical observation is that the NDB's first co-financed projects were not with fellow MDBs, but with a national-level development bank, Brazil's BNDES, and Chinese financial institutions. In so doing, the NDB took a totally different approach from the AIIB, which immediately started operations with large-scale co-financed projects with the WBG and ADB. NDB took a different course from AIIB which worked with MDBs right from the start of its operations. EBRD and the AIIB have partnered already on projects, starting in 2016, the AIIB's first year of operation. EBRD and AIIB each co-financed US$27.5 million in 2016 in the Dushanbe-Uzbekistan Border Road Improvement Project in Tajikistan[96]. In April 2021, the EBRD and AIIB entered into a new co-financing framework agreement[97], building on the previous EBRD-AIIB MOU in 2016, to streamline their cooperation to promote economic development and investment across countries where both institutions are active. Since the EBRD-AIIB MOU of 2016, both Banks have provided over US$2.4 billion of funding to common projects in the energy and transport sectors, as well as Covid-19 pandemic response. In June 2021, AIIB co-financed US$100 million in the Sirdarya 1,500MW Combined-Cycle Gas Turbine Power Project in Uzbekistan[98], which was also co-financed by EBRD by a loan of up to US$200 million.

The NDB had an unusual MOU with EBRD in 2017 – there has been no co-financed project in place yet. Now that Egypt is a member of NDB and also a country of operation in EBRD, the proof of the pudding will be realized when there is a co-financed project for Egypt or any other country of operation

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[96] EBRD, 'Road Project in Tajikistan becomes first joint EBRD-AIIB investment' (2016), available at <https://www.ebrd.com/news/2016/road-project-in-tajikistan-becomes-first-joint-ebrdaiib-investment.html>.

[97] AIIB, 'AIIB and EBRD streamline co-financing procedure', 2010, available at <https://www.aiib.org/en/news-events/news/2021/AIIB-and-EBRD-streamline-co-financing-procedures.html>.

[98] AIIB, 'Uzbekistan: Sirdarya 1,500MW CCGT Power Project', 2010, available at <https://www.aiib.org/en/projects/details/2021/approved/Uzbekistan-Sirdarya-1500MW-CCGT-Power-Project.html>.

which is also a member of NDB. Russia was out of the equation even before the MOU was in place, so the MOU has to be tested for its efficacy in other areas such as advice on strategies or policies or business models. In October 2017, NDB President K.V. Kamath stated, the "EBRD has been working closely with the NDB during its establishment process."[99] The NDB President noted that it was the responsibility of the Bank to "provide the best possible products and services to our members", and that "partnerships with key national and global institutions are essential." At best, these are empty words or rhetorical. There needs to be teeth to give any meaning to these exhortations. On the other hand, the EBRD President Suma Chakrabarti remarked that EBRD's assistance at the initial stages of establishing the NDB "came in the form of advice on strategies and policies, governance, business models, evaluation and procurement."[100] That gave credence to the shaping of the MOU, but the actual MOU implementation did not materialize as no co-financing project took place. But with Egypt's membership in the NDB, the MOU does provide a basis for co-financing project opportunities.

NDB should have a clear direction on its strategy in line with its operations striving for transparency and accountability. The updated strategy 2022 – 2026 has an unusual twist in that it was posted on the Bank's website on 1 July 2022, though it was approved on 19 May 2002. On 20 May 2022, NDB issued a press release that the new strategy was approved by the Board of Governors on 19 May 2022 and that it "will be uploaded separately to the NDB's website". It also quoted the NDB President's statement "As the New Development Bank enters into the 2022–2026 strategy cycle, *our mandate is more relevant than ever*. We are fully committed to positioning it as a premier development bank for emerging economies. Our duty is to maximize development impact**.**" (emphasis added).

It is unusual for an institution not to post any update to the previous Strategy although there were enabling provisions for a review and update. It is also unusual to have a General Strategy for 2022– 2026 which cover this period but approving it on 19 May 2022, and the question remains: what about the period from 1 January 2022 to 18 May 2022 (date of approval) or 1 July 2022 (the date the document was posted on the NDB website)? On 24 June 2022, NDB President noted the General Strategy 2022 – 2022 in his report to the 14th BRICS Summit. This speech referred to more than 80 projects in the period from 2022 to 2026 and to "new development paradigms." These new paradigms do not match the rhetoric of the Bank that it is "committed to a policy of information disclosure to promote transparency and accountability in its operations" under

[99] EBRD, 'New Development Bank, EBRD affirm mutual goals, agree cooperation', 2017, available at <https://www.ebrd.com/news/2017/new-development-bank-ebrd-affirm-mutual-goals-agree-co-operation.html>.

[100] EBRD, 'EBRD President concludes visit of NDB Annual Meeting in Delhi' 2017, available at <https://www.ebrd.com/news/2017/ebrd-president-concludes-visit-of-ndb-annual-meeting-in-delhi.html>.

the Information Disclosure Policy (June 2017) consistent with the Bank's charter requirement that its proceedings are transparent (Article 15).

In the Bank's Information Disclosure Policy[101], governance information of General Strategy approved by the Board of Governors is public information, and the information is not timely disclosed on the website. On 20 May 2022, the NDB stated in its press release on its website that the General Strategy for 2022-2026 "will be uploaded separately on the NDB's website" and it took at least 40 calendar days for the document to be published. In the Information Disclosure Policy, the Bank states the "key public Bank documents (with hyperlinks)" – which includes the Strategy as part of Governance Information under the policy – will be published on the Bank's website. There is no time prescribed but a reasonable interpretation is that the document would be released the soonest possible – and taking the Bank at least 40 calendar days to do so and also, the NDB President had already highlighted this document in his report to the 14th BRICS Summit. Separately, the author requested the Bank in an email of 27 June 2022 for the pdf document or link on the General Strategy 2022 – 2026 and received a response on 28 June 2022 that the Bank was processing the request. On 2 July 2022 that the Bank emailed the author providing the link posted on 1 July 2022 when that link could have been posted on the NDB website soonest after 20 May 2022.

NDB's MOU with ADB of 4 July 2016 expired on 16 September 2021 and there was a gap of about 9 months before a freshly-executed MOU was entered to reflect the parties' current needs as mentioned above. The lapse of an MOU *per se* is not critical but it does matter when the NDB places high priority on partnerships with MDBs and other entities, as provided in its charter, on its website information on partnerships, and strategies. MOUs are generally not legally binding documents in that the parties can view the understanding or agreements as a statement of intent. But they do serve as an avenue to bolster strengthening relationships by bringing the parties together in articulating their areas of common interest and energy that that they wish to derive from entering into an arrangement. This renewed MOU has clear language in contrast with the first MOU which was couched in elusive language, which could serve as a basis for NDB to have clearly-worded MOUs to define relationships and matters for coverage.

Also, the Bank's motto of being fast and responsive could be more vigorously applied to partnership MOUs with MDBs singled out for their importance in enabling NDB to meet its benchmark to "co-finance 20% of the projects approved during the strategy period with partner MDBs" (page 5). The co-financing should also be distinct from the practice of using some lesser known MDBs (such as IIM and EDB) as borrowers and implanting agencies discussed earlier.

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[101] NDB, 'Information Disclosure Policy' (2017), available at <https://www.ndb.int/wp-content/uploads/2017/01/information-disclosure-policy-revised.pdf>.

The Project Summary for Public Disclosure could be improved to provide clearer and accurate information as highlighted earlier. One example is the Mumbai Metro Rail Project[102] where it is not clear or accurate on why "Other Banks" was cited when it is just one bank, and why the name of ADB was not singled out for better information. Also, the information in this document is scant in contrast to the upfront by ADB in its news release of October 2017 and its project report on the Mumbai Metro Rail Systems Project[103] where it gives more information on the co-financing partners. It also states very useful information that "New Development Bank is financing in parallel certain specific traction and power equipment to the extent of approximately $260 million. This will be under a separate contract and not administered by ADB." (page 3).

Concomitant with the Project Summary for Public Disclosure, NDB aims to provide other relevant documents such as publishing Project Documents to the Board (PDB) for sovereign operations after Board approval as provided in the Information Disclosure Policy[104] (page 6). As of 1 August 2022, these project related documents have not been published on the website. It is noted that civil society organizations such as Oxfam India in The Right to Know (2018) have raised concerns on NDB's disclosure of information noting that "there remains much ground to cover" and that it "pivotal for the Bank to acknowledge the access to information as a human right by facilitating exchanges with affected community representatives in an accessible and timely manner[105].(page 26).

The right to information is a recognized element of the freedom of expression and a basic human right. Financial institutions like the NDB should be required to uphold recognized international and regional human rights standards in addition to transparency and accountability criteria as the funds are public resources. The UN Working Group on Business and Human Rights[106] and the United Nations Guiding Principles on Business and Human Rights (2011) both make reference to this principle[107]. The people most likely to be impacted by infrastructure developments must be engaged in meaningful and institutionalized ways for true sustainable development. Identifying social and environmental risks depends on timely information transmission throughout the development project cycle and access to pertinent information. There is a compelling need for NDB to incorporate in a clear and transparent way in its information disclosure policy the documents provided for public disclosure.

Oxfam South Africa co-published a paper "Enhancing the New Development's Bank practice of information disclosure" (2022) raising issues on improving access to information from the NDB and made recommendations on why greater transparency is needed[108]. NDB's email reply of 13 September 2021

[108] Oxfam South Africa, *Enhancing the New Development Bank's Practice of Information Disclosure*, 2022, available at <https://www.oxfam.org.za/wp-content/uploads/2022/06/oxfam-ndb-accountability-discussion-paper-1-web.pdf>.

to Oxfam South Africa's information request email of 2 August 2021 on disclosure of projects during design and development was that "we are preparing for publishing PDBs for sovereign operations. Such PDBs contain the financial and economic analyses of projects and provide insights on the decision-making rationale and due diligence outcomes. We are expecting that starting from Q1 2022, newly approved PDBs would be made public, subject to consultations with the borrowers in line with the IDP." (page 26) NDB's reply was provided about a month and a half after Oxfam South Africa's query, which reflects a slow response, but importantly, it does not address the need for PDBs already approved, and as of now, newly approved PDBs are still not made available on the website. Magalie Masamba[109], an academic, has also opined in July 2022 that the NDB's "website has no project documents and its information portal is hard to use" generally and specifically with reference to the Environmental Protection Project for Medupi Thermal Power Plant[110] and the Lesotho Highlands Water Project Phase II[111].

In 2018, Schodolki and Demeulsemeester noted in "The BRICS Coming of Age and the New Development Bank" that the NDB had over 20 partnership agreements with other institutions, including co-financing agreements that have been essential for enabling some of the Bank's operations, with the distinct "advantage of learning from past experiences to develop innovative solutions for the challenges brought by the 21st century. Moving forward, the Bank's strong emphasis in cooperation will become even more crucial due to a fast-changing environment."[112] While there has been an increasing number of partnership agreements with MDBs, the direction and framework have not been clear and forceful enough, with adequate backing by policies, strategies, and project information disclosure. The current Strategy for 2022 -2026 provides that there will be USD30 billion in total volume of approved financing from the Bank's balance sheet over 2022-2006, and there will be co-financing of 20% of projects (in numbers of projects) with partner MDBs over this period. In the period from 2022 to 2026, there are expected to be about 80 approved projects, which means that would be about 15 projects co-financed projects by NDB with the other MDBs in this period.

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109 Magalie Masamba, 'How BRICS' New Development Bank can improve transparency and accountability', July 13th 2022, available at <https://theconversation.com/how-brics-new-development-bank-can-improve-transparency-and-accountability-186265>.

110 NDB, 'Environmental Protection Project for Medupi Thermal Power Plant' (2019), available at <https://www.ndb.int/wp-content/uploads/2021/09/19ZA02-Eskom-Environment-Protection-Approved-Project-Summary.pdf>.

111 NDB, 'Lesotho Highlands Water Project Phase II' (2019), available at <https://www.ndb.int/wp-content/uploads/2021/09/19ZA01-LHWP-II-Approved-Project-Summary.pdf>.

112 Sergio Gusmao Suchodolski and Julien Marcel Demeulesmeester, *The BRICS Coming of Age and the New Development Bank,* Global Policy, October 2018.

In the NDB Strategy 2022–2026, the Bank, through these co-financing projects, will deepen the collaboration with its peers to create more space for mutual collaboration, learning and greater developmental impact, with potential scaling up of such financing after a mid-term strategic review and taking on board any lessons learned. (page 5) The review provides a suitable platform for learning lessons, which should not be limited to co-financing of projects (joint or parallel) but approach to derive the best outcomes in its partnering with other MDBs and the public at large, including information disclosure.

A. Policy Recommendations

- Developing partnership arrangements such as through Memorandum of Understanding with stakeholders in the global development community particularly multilateral development banks (MDBs) is critical for a new MDB. There is so much that can be gained through sharing of information and policies, and for project identification and preparation.
- The strategic approach by the New Development Bank (NDB) in developing partnership approaches with stakeholders in the global development community MDBs in enhancing the Banks' mandate should be clearer with reference to policy, direction, and implementation.
- While the approach to partnerships in the NDB's list of 35 partnership MOUs is highly commendable, more can be done to articulate on the specific approaches taken with the entities and how these can be improved such as the project summary for public disclosure and other documents.
- Concomitant with spearheading a strategic approach on partnering with institutions including MDBs, the NDB needs to be clearer and more transparent in its internal policies and procedures, and governance.
- The NDB should devise ways to ensure that its approach to partnerships is meaningful for it to derive best outcomes and also meet its articulated stance on good governance, transparency and accountability. There is a compelling need for NDB to incorporate in a clear and transparent way in its information disclosure policy the documents provided for public disclosure.