

REPORT NO. 5 OF THE
SECTION OF INDIVIDUAL RIGHTS
AND RESPONSIBILITIES
PRESENTED JOINTLY WITH THE
SECTION OF INTERNATIONAL LAW AND PRACTICE
AND THE
STANDING COMMITTEE ON
WORLD ORDER UNDER LAW

RECOMMENDATION*

BE IT RESOLVED, That the American Bar Association urges the United States Government to instruct its representatives to each of the multilateral development banks to support the establishment of human rights departments in each such multilateral bank in which the United States is a member other than the International Monetary Fund. These include the International Bank for Reconstruction and Development, the International Development Association, the International Finance Corporation, the Inter-American Development Bank, the Inter-American Investment Corporation, the African Development Fund and the Asian Development Bank. The departments would provide expertise during the pre-project review and appraisal stage, to enable each of the banks to consider: 1) the effects of proposed loans and investments on human rights in a country; 2) the effects of human rights observance in a country on the purpose or likely success of the proposed loans and investments; and 3) the relationship between human rights observance in a country and economic development in such country.

REPORT

With the establishment of the International Bank for Reconstruction and Development (World Bank) in 1946, the need for major sources of new capital to meet the enormous needs created by the destruction of World War II was acknowledged. Since that time, the

*The recommendation was approved. See page 38.

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World Bank's mission has changed somewhat but its success has acted as a catalyst for the creation of related institutions (the International Development Bank and the International Finance Corporation) and similar regional institutions (the Inter-American Development Bank, the Inter-American Investment Corporation, the Asian Development Bank and the African Development Fund). The United States has played an important part in the establishment of these multilateral development banks (MDBs), and continues to be a major donor in each.

The MDBs are institutions designed to assist the economic growth of their developing country members. They are not simply aid agencies, however, because the manner in which they mobilize their resources—the issuance of bonds—requires a financial structure and discipline resembling that of financial institutions. Nevertheless, the degree of concessionality present in loans, the emphasis on economic development goals rather than simply the financial rate of return of projects, and the technical assistance made available to borrowers underscore the principal purpose of the banks: to overcome market imperfections and to achieve various objectives, including socio-economic objectives. The MDBs have been supportive of economic development as a broadly defined human right and have increasingly emphasized issues such as poverty alleviation, education and women in development, which would not normally fall within a traditional bankers' purview. Thus, the banks' allocation of capital reflects factors in addition to purely financial criteria.

Each of the MDBs is similar in

structure and operating style. All are owned by member governments contributing resources which essentially determine the members' relative voting strength; all are characterized by lending primarily for discrete investments (projects) at rates related to borrowing costs or, for the least developed of its members, on highly concessional terms. In reviewing loan proposals, the banks' staffs and directors are typically instructed not to interfere in the political affairs of members and to base their decisions solely on economic considerations.¹

The MDBs have recognized that development does not occur in a vacuum separate from the many social, cultural and other factors existing in the countries in which the programs operate. The decision to loan money is a presupposition that involves a wide variety of considerations, including a country's natural resources, rate of growth, political stability and others. For example, the review of the environmental consequences of proposals has been institutionalized in several of the MDBs by having environmental officers or departments within the banks. The World Bank recently created a central environmental department and established environmental units in each of its

¹Section 10 of Article 4 of the World Bank Articles of Agreement states: "The Bank and its officers shall not interfere in the political affairs of any member, nor shall they be influenced in their decisions by the political character of the member or members concerned. Only economic considerations shall be relevant to their decisions and these considerations shall be weighed impartially in order to achieve the purposes stated in Article I." Similar clauses are included in all other MDB charters. *e.g.*, International Finance Corporation, Article III, Section 9; Inter-American Development Bank, Article V, Section 6.

operating style. All member governments resources which examine the members' strength; all are by lending primarily investments (projects) to borrowing costs developed of its highly concessional wing loan proposals, staffs and directors are expected not to interfere in the affairs of members. Their decisions solely on economic considerations.¹ They have recognized that the rate does not occur in a vacuum from the many social and other factors existing in countries in which the rate. The decision to lend is a presupposition that takes into account a variety of considerations including a country's natural resources, rate of growth, stability and others. For a review of the environmental consequences of projects institutionalized in the MDBs by having environmental officers or departments in each bank. The World Bank created a central environmental unit and established similar units in each of its

Article 4 of the World Bank Agreement states: "The Bank shall not interfere in the political affairs of any member, nor shall they influence their decisions by the political position of the member or members. Only economic considerations shall be weighed impartially in the exercise of their purposes stated in the constituent clauses are included in the charters, e.g., International Development Bank, Article

four regional offices.² Environmental issues on projects classified as having a significant environmental impact are reviewed at the Inter-American Development Bank by its Environmental Management Committee.³

The banks have also been active in fostering projects which have as a primary goal not simply economic development but such purposes as the alleviation of poverty, combatting disease, malnutrition and illiteracy, and seeking an enhanced role for women in development. The women in development initiative by the World Bank is particularly noteworthy. It concentrates on showing what can be done to include women in the development process and how inclusion, in turn, contributes to the attainment of other development objectives: economic growth, more efficient and sustainable utilization of resources, alleviation of poverty, improved family welfare and slower population growth. The division in charge of the program at the World Bank performs the following functions: i) it documents effective approaches to illustrate what works in particular sectors and ii) it develops guidelines for incorporating attention to women in macroeconomic and sectoral analyses and in project formulation and design.

All of these MDB activities recognize that in approaching the difficult task of economic development, the conditions under which citizens live are relevant, and often critical, to the ultimate success of a particular program. In many cases, this is no less true for civil and political rights. As has been noted by

²1988 World Bank Annual Report, at 43.

³1988 Inter-American Development Bank Annual Report, at 15.

the current General Counsel to the World Bank:

Civil rights are also basic to human development and happiness. No balanced development can be achieved, in my view, without the realization of a minimum degree of all human rights, material or otherwise, in an environment that allows each people to preserve their culture while continuously improving their living standards. This suggests that the [World] Bank should be concerned with the broad effect of its loans on the welfare of the beneficiary individuals. Human rights violations in specific cases also have broader implications related to the country's stability and prospective creditworthiness or to its ability to carry out Bank-financed projects, or to the Bank's ability to supervise them, which obviously are factors that the Bank must take into account to the extent they prove relevant in the circumstances of a specific case.⁴

On occasion, the link between human rights and economic development is even more direct. For example, it seems clear that one effect of apartheid is to create artificial rigidities in the South African labor market that produce shortages of skilled labor that in turn impede the growth of South Africa's economy. South Africa does not receive funding from any of these MDBs, but the principle involved is the same.

The relationship between economic development and the obser-

⁴Ibrahim F.I. Shihata, Vice President and General Counsel of the World Bank, in "The World Bank and Human Rights," *The Bank's World* (February, 1988), at 15.

vance of human rights is a reciprocal one having economic consequences, the review of which is necessary for pragmatic rather than ideological reasons. Human rights is thus properly included in the MDBs' internal review process as one of several factors assessed and weighed in making traditional banking determinations as to the creditworthiness of the borrower, the likelihood of repayment of the loan, and the merits and ultimate success of the proposed project.

The resolution calls for the institutionalization of a review of human rights considerations in each of the MDBs'⁵ analysis and appraisal of project proposals in a manner analogous to environmental impact analyses. This is not meant to criticize the performance of the MDBs or their outstanding record in the development area. Almost uniquely, the MDBs are institutions to which many countries would respond on these issues, at least in part, because of the banks' multilateral nature. The proposal review period at each of the MDBs is typically 18-24 months, during which time the staffs of each assess the merits of each project on technical, institutional, economic and financial grounds. The existence of human rights departments would enable the MDBs to consider the

effects of proposed loans and investments on human rights observance in a country, the effects of human rights observance in a country on the purpose and likely success of the proposed project and the relationship between human rights observance in a country and economic development in such country. The results of this human rights review would then be considered by each MDB along with all other variables in the pre-project assessment; they would not, by themselves, be determinative of the outcome of the project appraisal.

By including a pre-project assessment of the human rights implications of proposed loans and investments in the overall appraisal and review of such loans and investments, the multilateral development banks will not only fulfill their respective mandates to encourage economic development and sound economic policies, but will also enhance the excellent developmental work done by the MDBs and promote civil, economic and social justice.

Respectfully submitted,

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⁵The International Monetary Fund is not included. While the purposes of the IMF and the MDBs are closely related, the IMF primarily concerns itself with exchange rate, fiscal and monetary matters, and in particular short-term balance of payments problems. The MDBs take the lead in investment areas. The speed with which the IMF is called upon to act and its focus on monetary rather than developmental aspects of a problem militate against the creation of additional procedures which would inhibit effective and expeditious action.