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Human Rights and Environmental Considerations in the Lending Policies of International Development Agencies — An Introduction

VED P. NANDA*

I. INTRODUCTION

After decades of development efforts, economic development still remains a distant goal for many developing countries. The World Bank's *World Development Report 1988*¹ provides a vivid description of the situation:

Some African and highly indebted, middle-income countries have suffered significant declines in per capita income Their investments have fallen to levels at which even minimal replacement may no longer occur in important sectors of their economies Their debts are growing, but they still face negative net resource transfers because debt service obligations exceed the limited amounts of new financing. In some developing countries the severity of this prolonged economic slump already surpasses that of the Great Depression in the industrial countries . . . , and in many countries poverty is on the rise.²

The World Bank prescriptions to improve economic conditions in developing countries include restructuring of their economic policies³ and

* Thompson G. Marsh Professor of Law and Director of the International Legal Studies Program at the University of Denver College of Law. Articles published in this symposium were originally presented at a panel session of the 1988 Association of American Law Schools meeting in Miami. The panel was sponsored by the International Third World Legal Studies Association, and was chaired by Professor Ved P. Nanda, and among the panelists were: Ibrahim F. I. Shihata, James C. N. Paul, and Zygmunt J. B. Plater.

1. THE WORLD BANK, *World Development Report 1988* (1988).

2. *Id.* at 2-3.

3. *See id.* at 4.

reducing the net transfer of their financial resources.⁴ According to the World Bank, a reduction in the resource drain and increased investment in the developing countries will support growth comparable with that of the period during the 1950s and 1960s.⁵

This plan is sound but incomplete, for critics argue that the International Development Agencies (IDAs) have not adequately addressed their role in promoting and protecting human rights and in furthering sound environmental policies in developing countries.⁶ The focus of this inquiry is on why and how the IDAs should address these concerns in their decision making.

II. THE RIGHT TO DEVELOPMENT

In the recent past, one further perspective has entered the discourse on development, that of the "right to development."⁷ Although developmental activities in most developing countries are likely to remain focused on economic growth and capital formation, a marked shift from the 1950s and 1960s, when development was equated with economic growth, has occurred during the last decade.⁸ This shift, which emphasizes the well-being of the human person, is now reflected in the U.N. Declaration on the Right to Development (Declaration),⁹ adopted by the U.N. General Assembly in December 1986.

In the preamble, the General Assembly recognizes that "development is a comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits" resulting from it.¹⁰ The Declaration proclaims that "[t]he human person is the central subject of development and should be the active participant and beneficiary of the right to development."¹¹

4. *See id.* at 4-5.

5. *See id.*

6. *See* the articles by Professors Paul and Plater, *infra*.

7. *See e.g., Symposium — Development as an Emerging Human Right*, 15 CAL. WES. INT'L L.J. 429 (1985); Alston, *Making Space for New Human Rights: The Case of the Right to Development*, 1 HUM. RTS. Y.B. 3 (1988); Nanda, *Development as an Emerging Human Right Under International Law*, 13 DEN. J. INT'L L. & POL'Y 161 (1984), and the authorities cited *id.* at 161 n. 1.

8. *See, e.g.,* Nanda, *supra* note 7, ns. 4-12 and accompanying text.

9. Declaration on the Right to Development, G.A. Res. 41/128, 41 U.N. GAOR Supp. Annex (No. 53) at 186, U.N. Doc. A/41/53 (1986) [hereinafter cited as Res. 41/128]. The discussion on the right to development began in the U.N. Commission on Human Rights in 1977, *see U.N. Commission on Human Rights: Report on the Thirty-Third Session*, 33 U.N. ESCOR Supp. (No. 6) at 10-12, U.N. Doc. E/5927 (1977). Four years later, the Commission established a working group, pursuant to its decision to do so, *see U.N. Commission on Human Rights: Report on the Thirty-Seventh Session*, 37 U.N. ESCOR Supp. (No. 5) at 237, U.N. Doc. E/1981/25 (1981).

10. Res. 41/128, *supra* note 9, at second preambular para.

11. *Id.* at art. 2(1).

As a concept, the right to development raises difficult questions concerning its basis, content, beneficiaries and holders, obligors, the nature of the obligation, and enforcement.¹² The Declaration provides little assistance in addressing these questions, much less in answering them; it is too vague and undefined, and is no model of clarity.¹³ Consequently, the concept remains amorphous. Further efforts at the United Nations to refine the concept and recommend specific measures for its operationalization and implementation have seemingly reached an impasse.¹⁴

However, an expert group established by the United Nations to work on the implementation of the right to development reported at its recent meeting in January 1988 that it "attach[ed] great importance to the replies [on the implementation of the Declaration] which may be given by international financial institutions," such as the World Bank and the International Monetary Fund.¹⁵ It seems likely that the Declaration will become a rallying point for those seeking to establish an inseparable link between human rights and development. Thus, the lack of clarity in the content of the right to development concept notwithstanding, the concept is likely to gain wider acceptance, just as some of its predecessors such as self-determination and the New International Economic Order have done. Thus, the right to development could play a significant role in the future of development theory and practice.

III. IDAS AND HUMAN RIGHTS

To return to the critical question, why and how should the IDAs address human rights concerns in their activities? Preceding that inquiry, however, is another basic question: do the mandates under which these agencies operate permit them to take into account human rights considerations in their lending and other activities?

As the author of the first article in this symposium, the general counsel of the World Bank, Ibrahim Shihata, reminds us, the World Bank is "explicitly prohibited by its Articles of Agreement from interfering in the political affairs of its members."¹⁶ He acknowledges, however, that human rights issues may become relevant in the World Bank's decisions on lending to a particular country because of the effects of political situations "on the country's economy or on the feasibility of project implementation

12. For an insightful discussion, see Alston, *supra* note 7, at 20-40. Recently, there has been an attempt to "put the right to food on the agenda of national and international food agencies." *THE RIGHT TO FOOD* 7 (P. Alston & K. Tomasevski eds. 1984).

13. The author is currently working on a piece, co-authored with David Penna, entitled "Difficulty in Operationalizing the Declaration on the Right to Development," analyzing the right to development, especially in light of the Declaration.

14. See *Report of the Working Group of Governmental Experts on the Right to Development*, 44 U.N. ESCOR _____, paras. 40, 42, U.N. Doc. E/CN.4/1988/10, at 9-12 (1988). The United States withdrew from the Working Group in December 1987. See *id.*, para. 6.

15. See *id.* at para. 42(1).

16. See Shihata, *The World Bank and Human Rights: An Analysis of the Legal Issues and the Record of Achievements*, *infra* at 40 [hereinafter cited as Shihata].

or monitoring."¹⁷ Such relevance notwithstanding, he cautions that "the degree of respect paid by a government to human rights cannot be considered in itself a basis for the Bank's decision to make loans to that government or for the voting of its Executive Directors in every case."¹⁸

In his article, Mr. Shihata recounts the Bank's "significant role" in promoting human rights, especially the right to development, since the beneficiaries of Bank-financed projects in agriculture, irrigation, rural development and industry, amounting to almost \$150 billion in developmental assistance to developing countries, are the individuals.¹⁹

He concludes by suggesting that the material "basic needs" and civil rights are both "basic to human development and happiness," and that "no balanced development can be achieved 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."²⁰ Consequently, he admits that the Bank has to be "concerned with the broad effect of its loans on the welfare of the beneficiary individuals."²¹

This growing awareness of the importance of human rights considerations in the Bank's activities can be viewed as an important step furthering the reach of the right to development as well as other human rights. Likewise, as the author of the second article in this symposium, Professor James Paul, reminds us, failure to take rights seriously at every stage of the project cycle is likely to result in a flawed project, for "effective, self-reliant participation is essential to the design as well as the implementation, monitoring, and regulation of all development projects which affect particular groups of people in particular ways."²²

The increased participation of project-affected peoples in development decisions can only serve to reinforce and protect more "traditional" civil and political rights. Such procedures serve to emphasize the interconnection between civil and political as well as economic, social and cultural rights, which has been recently reaffirmed in the right to development.²³

Interrelationships are present not only between these various rights, but also between the organizations that are responsible for assisting in their implementation. No international institution can today deny that it has a role in promoting human rights. Professor Paul argues that "[t]he duty to protect and promote rights must now be seen as a mandatory obligation imposed by law. This duty should be assumed by IDAs as a

17. *Id.* at 47.

18. *Id.*

19. *See id.* at 49.

20. *Id.* at 65.

21. *Id.* at 66.

22. *See Paul, International Development Agencies, Human Rights and Humane Development Projects, infra* at 70 (1988) [hereinafter cited as Paul].

23. Res. 41/128, *supra* note 9.

matter of sound policy and based on both lessons of experience and a general, international consensus regarding both the ends and means of 'development.'²⁴

By participating in the promotion of human rights such as the right to development, these international agencies can take their rightful place in the debate that will help define the contours of the right to development and other rights. It is only through such a dialogue between theory and practice, politicians and technicians, that such rights can be realized. Appropriately, Professor Paul examines a number of measures the IDAs can take to meet their obligations, and makes thoughtful and practical suggestions toward that end.²⁵

IV. IDAS AND ENVIRONMENTAL CONSIDERATIONS

The recommendation in the preceding section, that IDAs' activities should take into consideration human rights, applies with equal force to environmental considerations as well. However, while the effect that programs financed by IDAs have had on the global environment is clear, the effect of environmental considerations upon IDA planning is, unfortunately, unclear even today.

There have undoubtedly been some positive developments in the recent past, indicating that planners would seriously consider the environmental effects of economic planning. To illustrate, an environmental staff has now been assembled in the World Bank,²⁶ which has created several environmental units; other IDAs have also begun to address environmental concerns. The timing is, however, important, for all this occurred after unilateral efforts were announced by various nations to take environmental impacts into consideration in determining their directors' approval of IDA lending decisions on specific projects.²⁷ Still, environmental concerns are allegedly being ignored, and projects with controversial environmental impacts approved and constructed.²⁸

Ignorance of such concerns is surely short-sighted, as Professor Zygmund Plater demonstrates in his paper, the last paper in this symposium, by illustrating how environmental problems can prevent and have

24. See Paul, *supra* note 22, at 69.

25. See *id.* at 109-114.

26. NROC seeks reversal of reductions in environmental staff, 11 Int'l Env't Rep. (BNA) 14 (Jan. 13, 1988).

27. See Kastan, *Hand in Hand: Economic Development and Environmental Protection*, 18 Env. L. Rep. 10047-49 (1988); Int'l Env't Rep. (BNA) 538-39 (Oct. 12, 1988) (Canada Urges Environmental Assessment by World Bank in Development Decisions).

28. See, e.g., 11 Int'l Env't Rep. (BNA), Curr. Rep. 191 (March 9, 1988) (Brazilian Indians opposing World Bank-supported dam projects); *id.* at 29 (Jan. 13, 1988) (Indian environmental groups protest environmental and social devastation caused by energy and coal projects in India); see also *id.* at 14 (environmental group protests reduction in environmental staff at World Bank); cf. *id.* at 388 (July 13, 1988) (World Bank official intends to invite consultations with NGO environmental groups).

in fact prevented developmental projects from achieving their goals.²⁹ He provides a useful classification of potential environmental impacts,³⁰ explains the reasons for the traditional IDA disinterest with environmental impacts,³¹ and identifies environmental costs which are typically ignored by IDAs.³² Even if these costs are difficult to quantify, they are important since they have substantial impacts on project performance.

Professor Plater finds validity in environmentalists' criticism that the traditional reluctance of IDAs to confront possible environmental impacts early in the planning of projects is, in part, institutional.³³ Prior to 1987, an environmental assessment was only provided during the third year of the project's existence.³⁴ The importance of environmental concerns, particularly those that are difficult to quantify at such a late stage in the project's development, were typically played down by those who had guided the project through its initial stages. Further, since most environmental concerns were also typically reviewed on a project rather than a sectoral basis, environmental problems were often dealt with in a piecemeal fashion, and were never meaningfully integrated into the "mission" of the IDAs.³⁵ This is not surprising since during the formative years of the IDAs environmental concerns and development concerns were publicly perceived as antagonistic,³⁶ especially because many developing nations had only limited resources available to them, and to allocate any funds to environmental considerations was considered a misallocation of scarce resources.³⁷

Several factors have interacted to change this perception. First, the outright failure of some projects due to inadequate consideration of environmental and human factors has brought about a belated recognition of the need to include "environmental costs" in assessing the feasibility of projects.³⁸ Second, increased environmental awareness in many developed nations has brought about political pressure by donor governments for environmentally sound development.³⁹

29. Plater, *Damning the Third World: Multilateral Development Banks, Environmental Diseconomies and International Reform Pressures on the Lending Process*, *infra* at 121 [hereinafter cited as Plater].

30. *See id.* at 129-140.

31. *See id.* at 137-144.

32. For a discussion of three classes of environmental costs, *see id.* at 129-140.

33. *See id.* at 137-146.

34. *See id.* at 139; Rich, *The Multilateral Development Banks, Environmental Policy, and the United States*, 12 *ECOL. L. Q.* 681, 708 (1985).

35. *See* Rich, *supra* note 34, at 708-709.

36. *See* discussion of environmentalism in Plater, *supra* note 29, at 125.

37. *See, e.g.,* Almeida, Beckerman, Sachs & Corea, *Environment and Development — The Founex Report*, INT'L CONCIL. (Jan. 1972) (discussing the tension between developing countries, which desired a greater degree of resource exploitation, and developed nations, which urged a greater degree of environmental control, preceding the 1972 U.N. Conference on the Human Environment in Stockholm).

38. *See* Plater, *supra* note 29, at 142.

39. *See* Kasten, *supra* note 27; Rich *supra* note 34.

Some have criticized such pressure or the “politicizing” of development issues as they would allege, primarily on the ground that the charters of organizations such as the World Bank seemingly attempt to insulate development projects by stating that rejection of funding should be based solely upon economic considerations.⁴⁰ However, the differentiation between environmental and economic issues is certainly not clear, and environmental concerns are probably no more “political” than economic concerns. Typically, today, environmental and economic, as well as social, issues have political implications, and debate on any one of these topics can be described as “politicized” to a certain extent. Further, the fact that environmental impacts, even ones difficult to quantify, can have a serious effect on the viability of projects,⁴¹ suggests that it is appropriate for the board of governors of IDAs to take environmental factors into consideration in determining the utility of a project.

Such a “unilateral” approach where a state or group of states applies pressure on the IDAs’ lending decisions on environmental grounds is likely to be criticized by those who see rejection of their project for such reasons as part of the ‘agenda’ of one or a few powerful states. Professor Plater observes that “[t]he definition of limits for the unilateral pressuring phenomenon . . . may well present a continuing perplex for the future.”⁴² In this context it is worth noting that, contrary to the perception that powerful states are using a unilateral approach in furtherance of their own “agenda,” most lending decisions of the governors of IDAs are taken by consensus.⁴³ Thus a process of persuasion must take place. While in any consensus, some members are “more equal” than others, it has recently been noted by the newly appointed head of the World Bank’s Environmental Department, Kenneth W. Piddington, that a “multilateral approach is taking a higher profile.”⁴⁴

A more severe criticism of traditional IDA assessment of projects concludes that past performance “calls into question the ecological soundness and sustainability of the development model promoted by the banks.”⁴⁵ Reliance upon large-scale, revenue-generating, export-oriented projects that are justifiable upon neoclassical economic theory has in many cases proved inadequate in accounting for environmental factors.⁴⁶ In large part, this may be due to the difficulty of reducing future environmental benefits to “present value.”⁴⁷ This calls for modification of such analysis to ensure environmentally sound projects as well as “sustainable

40. See Shihata, *supra* note 16, at 47.

41. See Plater, *supra* note 29, citing examples at 129-140.

42. See the discussion of unilateral pressures in Plater, *supra* note 29, at 152-155.

43. See Rich, *supra* note 34, at 684 n. 20. For the structure and operation of these agencies, see *id.*, at 682-685.

44. World Bank’s Environmental Chief sees shift to multilateral resolution of global issues, 11 *Int’l Env’t Rep. (BNA)* 538 (Oct. 12, 1988).

45. Rich, *supra* note 34, at 736 (citation omitted).

46. *Id.*

47. See *id.* at 737.

development.”

Nor can the economic or environmental effects of a project easily be separated from their social effects.⁴⁸ When a project significantly alters the ecological balance in an area, traditional social patterns are necessarily changed, often drastically.⁴⁹ Too often such disruptions are ignored or calculated merely in terms of employment or investment opportunities rather than in terms of adverse cultural impacts, increased risk of crime, alcohol abuse, or “loss of sense of purpose” on the part of affected individuals.

Perhaps some of these recent events suggest the direction in which a solution must be sought. First, methods must be developed to integrate environmental concerns into the early stages of the project planning and evaluation process. Further, since past environmental impacts, social impacts and poor economic performance have plagued many development projects, developmental models that concentrate on large, expensive, export-generating projects must be revised in light of more recent experience which suggests that smaller projects aimed at increasing self-sufficiency, particularly in agriculture, will have more beneficial environmental, social and economic impacts. Related to this point is the recognition that environmental, social and economic concerns are interrelated, and all are vital to the success of development projects.

The enshrinement of these principles as a multilateral initiative by amending instruments and charters of the IDAs is desirable since inputs from a wide variety of sources, including donor and developing nations as well as NGOs and the IDAs' own staff, will assist in achieving a consensus on these important issues as well as assure that the revisions reflect the interests of all concerned parties.

An additional advantage of such consensus could be the prevention of the financing of environmentally unsound projects even on a bilateral basis. For example, after the World Bank refused to finance certain projects in Thailand because of adverse environmental and social impacts, it was reported that Japan was considering financing the projects, despite the lack of any assurance of environmental safeguards.⁵⁰ One Japanese environmentalist urged the Japanese government to learn from the international pressure and “face its environmental responsibilities.”⁵¹ Indeed, such pressures are probably vital to forging an international consensus on these issues. Fortunately, some success has already been achieved, as evidenced by the World Bank's refusal to fund the Thai project.

48. See Pallemarts, *Development, Conservation, and Indigenous Rights in Brazil*, 8 HUM. RTS. Q. 374, 386 (1986), discussing the destruction of the environment of Amazonian Indians and the effect on their lifestyle.

49. *See id.*

50. Japan said it is planning to finance projects dropped by the World Bank, 11 Int'l Env't Rep.(BNA) 539 (Oct 12, 1988).

51. *Id.*

V. CONCLUSION

The IDA recognition of the usefulness of human rights and environmental considerations in their activities constitutes a welcome shift from their past practices. For such considerations to be taken seriously, institutional reforms in IDAs which have already begun must continue and must succeed. Of equal importance is the continuing vigilant role of human rights and environmental NGOs whose inexorable efforts have borne some fruit. Legal scholars must also contribute in further clarifying the legal frameworks within which this essential change can take place.

