

Cooperation of World Bank Group with the States and its Legal Consequences on Environment Protection

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Abstract

Economic activities and attempting to improve them along with the formation of industrial developmental plans in developing countries have exposed environments of these countries to noticeable concern. Formation of international institutes and organizations for the protection of environment has also boosted this concern. Among these institutes mention can be made of World Bank, which has been created for the aim of development of economic growth and development of developing countries. All of these activities together ignite the concern of damaging the environment. The present study was an attempt to investigate legal consequences and the role of World Bank Group, including International Bank for Reconstruction and Development (IBRD), International Finance Corporation (IFC) and International Development Association (IDA), on environment. Moreover, it attempted to study what effects formation of this group has had on protection of environment from the point of view of law.

Keywords: World Bank, Environment, International Bank for Reconstruction and Development, International Finance Corporation, International Development Association.

Introduction

Environment has a vital role in the lives of human being all over the globe. Since the European Industrial Revolution and its negative effects on the environment, attempts have been made in different fields to find ways for the protection of environment. Among these, establishment of international institutes for the protection of environment and approval of international documents for this aim fall within the scope of international law.

Man's economic activities and changes in the economic have brought up issues where environmental disaster is talked (Fetres, 1998). What pops into mind in this regard is whether international organizations who are responsible for development can have positive effects on the environment and so create a logical constructive link between economic development and healthy environment. In this study, the role of World Bank Group in having positive effects on the environment has been investigated. Investigation of the role of international institutes needs to take account of different issues. Regarding the economic role, attention must be paid to the influence of function of the related institute or organization in terms of international economic relations. Also, concerning the legal role of this institute, it is required that their preset objectives be considered by referring to their statutes.

International Bank for Reconstruction and Development, which is often called World Bank, dates back to a financial conference of United Nations hold in 1944 in Bretton Woods. The document for the establishment of International Bank for Reconstruction and Development was signed by 28 countries in December 27th, 1945. This institute initiated work in July 1946. International Bank for Reconstruction and Development made an agreement letter with United Nations where it was considered as the peculiar institute of United Nations; the agreement letter was

required to be executed from July 15th, 1947. International Bank for Reconstruction and Development is located in Washington (Beigzadeh, 2010). United States of America was the main encouraging agent for the formation of this bank. Meanwhile, in Bretton Woods, the United Kingdom mostly focused on the fund by mentioning its concerns about post-war payments.

The idea for the formation of an International Financial Corporation (IFC) for encouraging the private sector to invest was proposed by the US. This idea was supported by the General Assembly and the United Nations Economic and Social Council. Passing Resolution No. 823 in December 11th, 1954, General Assembly asked the international bank of reconstruction and development to prepare the draft of an international financial institute and, after having consensus of its members, report the conclusion to the economic and social council. Anyway, the result of these attempts was signing the international financial statute in May 25th, 1955. This statute was required to be executed after being confirmed by 30 members of the board of directors in July 20th, 1956, standing for 75% of the equity. Statute of this institute has been reformed twice and these reformations were required to be executed in 1956 and 1961, respectively. International Financial Corporation initiated activity in July 26th, 1956. Nevertheless, although IFC is independently organized, its members and organizational structure are the same as those of International bank of reconstruction and development. Head of international bank of reconstruction and development is the head of international financial corporation, too.

In 1950s, it became clear that the conditions under which World Bank granted loans for economic problems did not suffice for developing countries. This was due to the notion that these countries could not pay off for the loads, even those loans given with reasonable conditions and in accordance with market. This led US to propose that a group of member countries decide on formation an institute which would grant financial facilities with more suitable conditions for the poor countries. For these countries, a secondary branch of the bank was established which followed factors of world bank and which granted what was called 'soft loans'. International Development Association (IDA) grants loans to member countries for up to 50 years of pay back with interest rate of 0.75% per year. Statute of this institute was approved in January 26th, 1960 and was required to be executed in September 24th in the same year. Following the suggestion of Eisenhower, current US president, states agreed that IDA became an unavoidable column of the World Bank Group. This institute used to be known as one of the main parts of United Nations' Specific Institutes and is located in Washington (Beigzadeh, 2010).

Legal Role of World Bank Group in Environment Protection

To investigate the legal role of an institute about a subject, it is required that reference be made to its statute. Objectives written in statute of every organization indicate its future decisions. For improving the present condition of our world, activities within international organizations can be generalized to other fields, such as the environment, through presenting a broad interpretation. Now, not only act those organizations with a title of environment (e.g. United Nations' Environmental Plans, Commission on Sustainable Development (CSD), and Global Environmental Facilities (GEF)), but also international economic institutes and organizations which are managing world economy (or at least are aiming to manage it) such as World bank, International Money Fund, GATT/WTO, IFC, and IDA are influential, too, and have an environmental instruction (Hurrell, 1996).

Legal Role of International bank of Reconstruction and Development in Terms of Positive Effects on the Environment

Article 1 of Statute¹ of this bank include its objectives by stating that use of the expression ‘helping in reconstruction and development of member countries’ in paragraph 1 of article 1 of the statute of International bank of reconstruction and development, both literally and connotatively, indicates bank’s intention and its legal commitment to rebuilt or supervise all damages including environmental ones. A way of thinking which serve roots of this institute after world war II was elimination of war repercussions. A great characteristic shared by physical wars is harming the environment. These can include destroying jungles, polluting water, air and space, destroying natural homes of animals, etc.

Perhaps, the expression “reconstruction of economies which were destroyed or dysfunction” lead to the misunderstanding that paragraph 1 of article 1 of the statute is meant. However, with a deeper look in to the issue, it would become obvious that development exclusively refers to economic rehabilitation; and in its broader meaning includes sustainable development which directly environmental issues. In addition, reconstruction includes economy and other aspects of life in a country such as environmental, social, political, legal, etc. Even if this expression exclusively refers to economy, again reconstruction of environment would be indirectly related to environmental laws and so it would be in line with the cooperation mentioned in the beginning of paragraph 1 of article 1. This is because as it can be in the continuing parts of the expression, “... and transference of equipment which used to be employed for the production is dependent on the requirements of the time of justice and encouragements for the development of facilities or sources which are used for production in less developed countries”.

Presentation of these facilities is for protection. Production is also related to using natural resource and therefore environment is directly related to this important issue. Moreover, referring to less developed countries is an indicative of valuing these countries. As we know, economy of less developed countries is basically dependent on goods which are directly received from environment and economy in these countries is highly interrelated to environment; in other words, what affects economy in these countries directly affects the environment. Therefore economic growth, which was mentioned in paragraph 1 of article 1 of this statute as the legal framework through facilities, would definitely lead to paying more attention and giving more importance to the environment and would impede incorrect and unsustainable utilization. In addition, economic development would lead to

¹- The purposes of the Bank are:

- (i) To assist in the reconstruction and development of territories of members by facilitating the investment of capital for productive purposes, including the restoration of economies destroyed or disrupted by war, the reconversion of productive facilities to peacetime needs and the encouragement of the development of productive facilities and resources in less developed countries.
- (ii) To promote private foreign investment by means of guarantees or participations in loans and other investments made by private investors; and when private capital is not available on reasonable terms, to supplement private investment by providing, on suitable conditions, finance for productive purposes out of its own capital, funds raised by it and its other resources.
- (iii) To promote the long-range balanced growth of international trade and the maintenance of equilibrium in balances of payments by encouraging international investment for the development of the productive resources of members, thereby assisting in raising productivity, the standard of living and conditions of labor in their territories.
- (iv) To arrange the loans made or guaranteed by it in relation to international loans through other channels so that the more useful and urgent projects, large and small alike, will be dealt with first.
- (v) To conduct its operations with due regard to the effect of international investment on business conditions in the territories of members and, in the immediate postwar years, to assist in bringing about a smooth transition from a wartime to a peacetime economy. The Bank shall be guided in all its decisions by the purposes set forth above.

development of technology which would, in turn, lead to better preservation and planning of the environment.

In following parts of article 1, i.e. in paragraphs 2, 3, 4 and 5, the statute encourages employment of private investment while offering services such as guarantee and coordination in granting loans and maintaining balances in payments by encouraging international investment for the developing production. Particularly in paragraph 5 the statute states that: “regarding the influence of international investment on economies of member countries in post-war era, bank operation section attempted to a make a transition from war to peace”.²

As it was mentioned, the statutes make great focus on international investment and encouragement toward it. The relationship between foreign investment and environment is unavoidable. Regarding the influence of foreign investment on aerial environment, it must be noted that production of modern pieces for vehicles, particularly in parts related to fuel and creation of new fuels for vehicles, is considered as privileges of investment of developed countries for the environment of developing counties. This is because such activities of investing countries can cause less environment pollution. Furthermore, technical knowledge and specialties can also prove effective for production of less pollution, e.g. in preventing environmental pollution produced by factories or refining it; or at least reducing its harmful effects. Regarding space pollution, less pollution might be produced through foreign investment in these sections. This can be fulfilled by transferring technology and experience and throwing fewer objects into the space when it would be of no use. In this way, the space would be used more effectively. Moreover, investment in these sections would lead to lessening pollution of the atmosphere. Dealing with water pollution, it can be claimed that many factor might cause it. Foreign investment accompanied with the above technologies can prevent water pollution. For instance, entrance of waste made by factories into sea and rivers can have harmful effects. In this sense, updates knowledge can either refine it or lessen its effects by transferring it to other places. Regarding soil which is so important for man’s and animals’ lives that their survival is dependent on it, it is worth mentioning that foreign investment has caused it corruption in some cases. However, logical management not only can preserve soil but also it can pave the way for its development. It must be noted that devising an international legal framework for offering such services and transference of the related technologies is of great importance. This can be possible under the provision of international legal system and through plans and instructions of international institutes.

Generally speaking, foreign investment is often issued by the investors for whom environment protection is more important and whose citizens consider environment protection as a significant point to be considered. In this vein, citizens of developed countries pay more attention to environment than those of less developed countries. Therefore, if investment is to be made by a country whose internal rules are more strict toward protecting the environment, activities destroying it would be legally forbidden and environment would be automatically protected (Hooshmand, 2013).

Legal roles of IFC and IDA in Having Good Effects on Environment

According to article 1 of statutes of IFC and IDA, the aim of former is ‘Enhancement of Economic Development’ institute and the main objective of the latter is to ‘extend economic development’.³ Therefore, objectives of both the institutes are to improve economy and that is why

²- See also: Hooshmand, M. M. (2013). The effect of direct foreign investment on environment protection; 2th National Conference on Environment Protection and Planning, Hamedan, Iran

³- INTERNATIONAL FINANCE CORPORATION:

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decision was made to present them under the same title. Basically, economic development results in both preservation of the environment and sustainable development, though it can sometimes cause damages for the environment. Attempting to fulfill the objectives of International Bank for the Reconstruction and Development, aims of these two institutes are to enhance economic development through production companies of the private section, investment and increasing production in order to enhance life quality in less developed countries.

Development has many dimensions. Also, it can have significant effects on other institutes and different aspects of human' lives. The influence of economic development on financial affairs can lead to raise currency of a country, as compared to currency of other countries. Moreover, it can prevent dangerous fluctuations made buy foreign currencies. In addition, effect of economic development can increase employment and decrease unemployed people; in effect, this can reduce crime and promote the state of family.

An important point to be taken in to account here is the effect of economic development as the aims of mentioned institutes on environment. All variables of human's life such as legal, political, military, social and economic activities can have influences on the environment. The main point is that environment is an inseparable part of economy; when changes are imposed on one, the other would be affected too (Roger, Perman, Yue Ma, James, McGilvray, Michael, Common, 2003). Within the framework of sustainable development, a third concept has been recently added to the economic development. This means that environment protection is considered as the third fundamental dimension; after economic goals (such as economic improvement and economic efficiency) as the first dimension and social goals (such as income distribution, employment and purposeful helps) as the second dimension (Cohen, 1997). Therefore, economic sustainable development is deemed as a meaningless concept without paying fair attention to the environment.

In political economic view of the environment, the main focus is on the point that policies are set by politics and that policy makers need to decide on what requirements the public have; then they can spend time on evaluation of costs and decisions (Shorgen, 2000). What needs to be taken into account here is the role of power in decision making and policy making of the environment. Being aware of the political processes involved in resource allocation, one can design the environmental plans which have political acceptance and economic efficiency (Joskow & Schmalensee, 2000). However, this is impossible without legal viewpoints within the framework of rules.

Issues related to environmental political economy enjoy uncertainty due to the nature of environmental topics. Such uncertainty paves the way for political influential effects with regard to environment protection and development. In this way, the discrepancy between environment-

The purpose of the Corporation is to further economic development by encouraging the growth of productive private enterprise in member countries, particularly in the less developed areas, thus supplementing the activities of the International Bank for Reconstruction and Development (hereinafter called the Bank). In carrying out this purpose, the Corporation shall:

- (i) in association with private investors, assist in financing the establishment, improvement and expansion of productive private enterprises which would contribute to the development of its member countries by making investments, without guarantee of repayment by the member government concerned, in cases where sufficient private capital is not available on reasonable terms;
- (ii) seek to bring together investment opportunities, domestic and foreign private capital, and experienced management; and
- (iii) seek to stimulate, and to help create conditions conducive to, the flow of private capital, domestic and foreign, into productive investment in member countries.

The Corporation shall be guided in all its decisions by the provisions of this Article.

oriented concerns and development-oriented concern would concern the very important notion that pollution is made at the expense of development (Masauod, 2000). Nevertheless, economists do not agree with this basic assumption. Another important factor is what Ruggie, Sorokin, Le Goff et al. call temporality. The time period a society require to make its decision would confront evaluations, nature of affairs and types of responses in each with fundamental changes; and these changes would make decision making difficult particularly within the strategic and political dimension (Ruggie, 2000).

Creating a relationship between environment and type of political systems is among other salient characteristics of political economy theory. Basically, form of government is strong related to income (Deacon, 1999). Role of government in economy of environment is highly dependent on the method of offering services (e.g. environment protection) and quality of them (Gerny, 2000).

Three era can be considered for the investigation of roles of states as the main function of international law within environmental economy in developing countries, namely colonizing era, independency era (time after World War II) and Post Fordism era, or globalization of economy. In the first era, functions and performances of the state are deemed in economy of environment based on legal responsibilities made by the colonizing governments. In independency era, which is concurrent with Fordism era, governments of these countries adopted the functions and roles of development and used to empower them. Then, they employed all abilities, capacities and resources for reaching development and growth within an Fordism economic growth framework (mass production, state with welfare, strong support, export development strategy, utmost mediation of economy, ideological emphasis on independency and absolute national governance). Finally, in the third era, traditional roles and functions of the states in environmental economy of developing countries have been noticed by local and global forces. In this era, roles and functions of the government are faced with serious challenges, chances for scape and fundamental changes. Generally speaking, theorists of political economy of environment generally propose that the role and function of a state is corruptive for developing countries (Walker, 1989). Therefore, governments and decision makers are basically incapable of recognizing and choosing legal solutions, policies and norms. In this way, the states themselves are considered as the main obstacle to solve the environmental problem at the local, global and international scopes (Hass, 1999). Thus, cooperation and guidance of specialized institutes, which have pre-defined planning and specific legal frameworks for environment protection along with financial supports, can be the solution to the disagreement between development and environment protection. Among these institutes, mention can be made of IFC and IDA.

Baily and Bryant believe that the best solution to the problems of the states' corrupting role of environment is identification and affirmation of the inherent continuous discrepancy in states' function. In fact, in one hand, a state needs to play some roles as a developer and, on the other hand, roles as a supporter, protector and responsible of the environment; this discrepancy exists in states of developing countries' policies and functions after the World War II (Bryant and Baily, 1997). Walker introduces this discrepancy as states have never known themselves responsible for the management and protection of environment and biologic resources. However, they have been forced to accept such a responsibility as an actor with the role of providing and enhancement of mass products (e.g. environment). In action, the performance of the state has been disappointing, it not a disaster. Instead of being a solution to environmental problems, states have generally spread them (Walker, 1989).

Process of economic globalization changes the role and status of the state in the realm of economy. But, the important point to be considered is that states of developing countries have never

been victims of economic globalization of the market and multi-national companies (Stabbs & Underhill, 2000).

At the first sight, globalization of economy and environment create a complicated mutual dependency on economy and environment, respectively. Also, with globalization of resources, investment and labor, different expanding relationships might be created within the international and transnational levels. In this regard, the states' legal role and behaviors form the systematic framework of such a relationship. In a globalized economy, state's failure might not mean quitting the economy and depending on the market. In such conditions, the state and the market have both key roles. The state and the market have failures, too. Appropriate and efficient function of the market required the state's support and guidance (Khor, 2000). Without such state with appropriate behavior, sustainable development would be impossible both in terms of economy and politics. One fundamental responsibility of globalizing developing countries is environment protection. States of developing countries can use information technology so as to encourage citizens to volunteer in innovation and pioneering. This can be done through reformation of the state's structure within the related legal framework, addition of new labor forces to the governmental states, motivating heads and supervision of unwanted undesirable activities. Measures need to be taken to stand against corruption in different sections and departments of the government; this would be possible only through accurate paths of laws. This is because globalization is a threat to states where there is not comprehensive and efficient legal system and subsequently with no legal framework and guarantee of action; while for legally efficient and disciplined countries, the way is paved for enhancement of development and economic welfare. As World Bank confirms it, during the process of globalization not only the role and importance of the states is not diminished, but also the states' roles need to be enhanced in providing public goods and the necessary rules for checking protective behaviors and supporting sustainable development and clean production. This can be fulfilled through recommending reformations, avoiding corruption, making the government efficient, effective interference in economy and generally creating and supporting a good governance and strong state (World bank, role of state in changing world, 1999). State's confrontation with environmental crisis faces another problem, which is mostly political, in many developing countries; this problem is linking environmental issues with legitimating of the political system (Ghavam, 2003). Many of these states do not own enough ability to deal with environmental issues due to inefficiency, internal corruption, powerless legal system, theft and crime, poverty and vast unemployment. Accordingly, some claim that this problem would not be solved without bottom-up pressure (warning citizens to make policy maker employ environment friendly viewpoint) (state, corruption, social opportunities, interaction of thoughts in political economy development, 2002). States of developing countries need to present data and information about their economy since they need foreign investment and financial support. One reason for this is to make internal more transparent their economy, behavior of their administrators, and political processes for supervisors coming from World Bank, and BIS (Hurrel, 2001). In other words, transparency talks here as one of main principles of public law. In one hand, demand increases for the power and capability of the states so as to support people's rights and groups' right within the country and to equally distribute wealth for finding a solution to sustainable development. On the other hand, legitimacy of demand for limiting states' power increases as one part of solution to cooperative management of global eco-system (for example, for reducing use of fossil fuels or controlling use of gas which harm ozone layer or limiting equatorial forests) (Hurrel, 2000).

Economic globalization has also exposed developing countries to the fact that economic growth and destroying of the environment are two sides of a coin. The notion that some parts of

environment need to be destroyed for its development makes basics of development weak. Making this fact transparent is both an obstacle and an opportunity for the developing countries. Management of these obstacles and opportunities is very difficult for these states: besieging society for preventing misuse of the environment (through either legal or illegal activities companies, internal or foreign corporations). Understanding of importance of training and researching about the environment and enhancing it would create wide cooperation at internal and external levels between all the involved parties for better prevention and controlling of fast trans-boundary, trans-boundary and irreversible destroying of the environment during globalization of economy, enhancement of local environmental NGOs, setting and implementing wide environmental standards, standing against political intrusions, etc. (Mittleman, 2000).

Conclusion

World Bank Financial Group, i.e. international bank of reconstruction and development, IFC, IDA, are the most important international legal institutes which act within an international arena. Activities of World Bank Group have significant effects on all aspects of man. Social dimensions are influenced because of the notion that financial supports can enhance people's life quality and income and this would lead to development. Political dimensions are important since a country with stable economy would have less political tensions. More importantly, economic dimensions are accounted for as the main focus of this group and this type of dimensions cause economic development and change from a state of economic pressure to a state of economic balance. This study made an investigation on the effects (or better say, legal role) of this group on environment. The study concluded that these institutes have, legally speaking, bold influences on environment. This can be through attempting to reconstruct and develop countries, which is an efficient strategy for environment protection of repairing damaged ones. Economic development would lead to technological development and would also cause better protection and exploitation of it; thus resulting in sustainable development. All in all, correct management of World Bank objectives results in more positive influences these institutes might have on the environment. However, basically legal role of World Bank is considered positive.

The most important role in the realm of economic development is played by their states. Therefore, true recognition of distribution of resources and a correct method of investment need comprehensive analysis. This is not possible through mere internal management. Therefore, relying on states which are more specialized in financial matters and are more concerned with environment can promote environment protection, along with development of economy. Nonetheless, attention needs to be paid to the fact that suggestions and recommendation offered by these states must be noticed and followed well. In addition, states should note that the services presented must be in a way that would guarantee environment protection and that environment protection is the main objective of the economic institute. This is because sustainable development is a meaningless concept in case it would end in destroying the environment.

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