

## A PEEK INTO THE LAW GOVERNING MULTILATERAL DEVELOPMENT BANKS

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### **ABSTRACT**

*On the offset, war had come to an end the nations that were robbed, ruined and plagued by the war were suffering from the aftermath of this war in all sectors of their life. The economies were handicapped and so were people's trust in the world and its organisations. along with the inception of the United Nations, the allied forces created the first Multilateral Development Bank – The World Bank. in order to ensure that the development of its member states remains the primary aim the establishment rose and under its guidance, many more Organisations And banks were established in order to benefit the nations and their economies.*

**Keywords:** Multilateral, development, bank

### **INTRODUCTION**

The aftermath of the Second World War left the world's economy in shambles. People and markets were traumatised. Heavy bombings destroyed the infrastructure of the nations. Gloom and pall hung over the world. Sworn enemies slowly realised the devastating effect of war and the need to come together in order to help in the resurrection of the economies of nations and the rebuild not just the infrastructure but also to give humanity hope to live and a future to see. The need was then felt for a financial institution of such scale that would help not just a few nations but the whole world. 44 nations gathered in Bretton Woods, New Hampshire, USA from July 1 to 22, 1944 called the Bretton Woods Conference, officially known as the United Nations Monetary and Financial Conference, which led to the creation of the International Monetary Fund (IMF) and the International Bank for Reconstruction and Development (IBRD).

IMF was mandated to maintain a fixed exchange rates system centered on the U.S. dollar and gold and where needed to assist countries experiencing temporary currency crunch in their balance of payments. The IBRD's mandate was to provide financial assistance for the

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reconstruction of war-ravaged nations and the economic development of less developed countries. Both officially came into existence on December 27, 1945. IBRD first began operations in 1946 and it had 38 members. Subsequently, the International Development Association (IDA) was established in 1960, to focus on the world's poorest countries. IBRD & IDA together became the World Bank. They were the first Multilateral Development Banks (MDB) subsequently to be followed by the establishment of the following banks namely:

1. African Development Bank
2. Asian Development Bank
3. European Bank for Reconstruction and Development

Today, almost all countries are members of the World Bank to be precise owned by 189 countries. The Bank is one of the world's largest research centers in development. It has specialized departments that use this knowledge to advise countries in areas like health, education, nutrition, finance, justice, law and the environment. Another part of the Bank, the **World Bank Institute**, offers training to government and other officials in the world through local research and teaching institutions.

**African Development Bank:** The African Development Bank is a regional multilateral development finance institution established in 1963 with a mandate to further the economic development and social progress of African countries, individually and collectively. It has 54 member states from Africa and 26 non-regional shareholders from Asia, Europe, and the Americas.<sup>1</sup> According to Article 1 of the AfDB Charter: “The purpose of the Bank shall be to contribute to the sustainable economic development and social progress of its regional members individually and jointly.”<sup>2</sup>

**Asian Development Bank:** The Asian Development Bank (ADB) is a multilateral development bank, which seeks to help its developing member countries to reduce poverty and improve their people's quality of life through inclusive economic growth, environmentally sustainable growth and regional integration. The purpose of the Bank shall be to foster economic growth and cooperation in the region of Asia and the Far East (hereinafter referred to as the "region") and to contribute to the acceleration of the process of

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<sup>1</sup>AfDb Website, <https://www.afdb.org/en>

<sup>2</sup>The Charter of AfDB, [https://www.afdb.org/fileadmin/uploads/afdb/Documents/Legal-Documents/Agreement\\_establishing\\_the\\_African\\_development\\_bank\\_-\\_2016\\_edition.pdf](https://www.afdb.org/fileadmin/uploads/afdb/Documents/Legal-Documents/Agreement_establishing_the_African_development_bank_-_2016_edition.pdf)

economic development of the developing member countries in the region, collectively and individually. Wherever used in this Agreement, the terms "region of Asia and the Far East" and "region" shall comprise the territories of Asia and the Far East included in the Terms of Reference of the United Nations Economic Commission for Asia and the Far East.<sup>3</sup>

**European Bank for Reconstruction and Development:** The European Bank for Reconstruction and Development (EBRD) is a development bank that provides project financing for banks, industries and businesses, both new ventures and existing companies. It prioritizes support for countries in Central and West Asia, and North Africa. It focuses on advancing developmental goals in finance and policy reform. Founded in 1991, the EBRD provides project financing mainly for private enterprises, usually together with other commercial lending partners, in countries that are committed to, and apply democratic principles. It also works with public partners to support privatisation, restructuring and improvement of municipal services. It does this by financing investments, providing business services and getting involved in high-level policy dialogue in these countries to support private sector development.<sup>4</sup>

## AN ANALYSIS OF THE INSTITUTIONS

When one analyses the main purposes and objectives of the following MDBs what comes across is the fact that these organisations have their goals aligned towards a common cause, i.e. the development of their member states and the eradication of social problems such as hunger, backwardness in education and health and poverty. The only differing factor among these banks is their areas of work (territorial) and their sectors of work (Private or Public). The common thread running through these institutions however remains the same- *development and prosperity of the human race.*

## THE LEGAL ASPECT

The MDBs are governed by their charter in most cases called the Articles of Agreement (This was how IBRD's charter was called and followed by other MDBs). The IBRD Articles of Agreement were drawn up at the United Nations Monetary and Financial Conference, at Bretton Woods, New Hampshire, July 1-22, 1944. The governing document became effective

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<sup>3</sup> Charter of ADB <https://www.adb.org/sites/default/files/institutional-document/32120/charter.pdf>

<sup>4</sup> EDRB and ADB partnership, <https://www.adb.org/multimedia/partnership-report2019/partners/multilateral/european-bank-reconstruction-development/>

on December 27, 1945, and has been amended three times: December 17, 1965, February 16, 1989, and June 27, 2012. As far as the legal side of the MDBs is concerned they are guided by public international law and international human rights law as they are intergovernmental entities and hence need to be governed more by public international law rather than municipal laws. Laws from the Vienna Convention for Treaties hold validity and importance in the matters of MDBs owing to the fact that these institutions are classified as international organisations.

## **PUBLIC INTERNATIONAL LAW**

The ambit of International Law has been debated for many years among scholars and various officials and members of the organisations. One school of thought believes that the term “states” that has been stated refers to all the member nations of the organisation while on the other hand, another school of thought believes that “states” refer to the non-state organisations such as Multilateral Development Banks. If we were to take the definition of the second school of thought then the Multilateral Development Banks would be under the authority and regulation of the Vienna Convention of Law of Treaties 1969 (Convention).

The Vienna Convention: The Vienna Convention refers to international organizations. Article 5 states that the “Convention applies to any treaty which is the constituent instrument of an international organization and to any treaty adopted within an international organization without prejudice to any relevant rules of the organization.” Article 2(1)(i) provides that “[f]or the purposes of the present Convention: . . . ‘International organization’ means an intergovernmental organization. “Three other Vienna conventions use the same legal definition and take the same approach: the Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character, the Vienna Convention on Succession of States in Respect of Treaties, and the Vienna Convention on the Law of Treaties between States and International Organizations or Between International Organizations.”<sup>5</sup>

As stated above the MDBs are considered as “states” according to the convention. Now arises the question of whether this is good or bad. It is a good move considering that all the organisations would be governed by one single document or convention rather than multiple

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<sup>5</sup>The Vienna convention Law of Treaties 1969 <https://www.worldtradelaw.net/document.php?id=misc/viennaconvention.pdf&mode=download#page=6>

sources. The Vienna Convention being a basic document and also a timeless masterpiece makes it easier to adopt it in modern times due to its adaptable nature as well as due to the foresight of its creators. But if we were to look at another aspect of this it would be better if we could have a main document similar to the Vienna Convention for the MDBs exclusively but again that would create more confusion in the system

## **INTERNATIONAL HUMAN RIGHTS LAW**

The governance of these institutions is done under International human rights law so as to make sure that the funds they receive are being used for the upliftment of society and for development purposes. Since these establishments have the sole function and aim, i.e. the development of humans living in the member nation, it is very important to make sure that the people are helped properly in times of need without in any manner being exploited in the name of development or financial assistance.

On one hand, states as parties of human rights treaties are subjects of the law. They have been embodied with a passive personality, provided that they have assumed obligations towards the protection of the fundamental rights of those individuals who are subject to their jurisdiction. Regional human rights treaties clearly determine such personality, including the American Convention on Human Rights (“American Convention”), the European Convention for the Protection of Human Rights and Fundamental Freedoms (“European Convention”), and the African Charter of Human and Peoples’ Rights (“African Charter”).

Journal of Legal Research and Juridical Sciences

On the other hand, individuals and groups have also been granted international personality. They possess an active personality since the above-mentioned Conventions entitle them to certain human rights. But their capacity is limited to the possibility of submitting claims against state parties, not against other entities.<sup>6</sup>

## **INDIAN LAWS AND MULTILATERAL DEVELOPMENT BANKS**

Multilateral development banks along with legal sanctions, conventions and treaties also have to comply with the laws of the countries that they operate in (municipal laws).

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<sup>6</sup>U.N. Int’l L. Comm’n, Responsibility of International Organizations: Titles and Texts of the Draft Articles 1, 2 and 3 Adopted by the Drafting Committee, art. 2, U.N. Doc. A/CN.4/L.632 (June 4, 2003) [hereinafter U.N. Int’l L. Comm’n, Draft Articles 1, 2 and 3].

India has passed several legislations (Acts) for incorporating the provisions of the Articles of Agreement of the MDBs into the local laws of India. Of particular mention would be The International Monetary Fund and Bank Act, 1945 (Act).<sup>7</sup>The Act was initially an Ordinance in 1945 which was converted into an Act by Act 25 of 1959 to implement the International Monetary Fund and Bank Agreements of which India was a signatory. The Act deals with the following matters:

Payments to International Monetary Fund (IMF) and IBRD (Bank);

Nominating the Reserve Bank of India to be the depository of the Indian currency holdings of the IMF and Bank;

Making certain provisions of the IMF and Bank Articles of Agreements to have the force of law in India some of which are:

Permitting the Bank to possess full juridical personality, and, in particular, the capacity

- (i) to contract;
- (ii) to acquire and dispose of immovable and movable property;
- (iii) to institute legal proceedings;

Permitting actions to be brought against the Bank only in a court of competent jurisdiction in the territories of a member in which the Bank has an office, has appointed an agent for the purpose of accepting service or notice of process, or has issued or guaranteed securities.

Making the property and assets of the Bank immune from all forms of seizure, attachment or execution before the delivery of final judgment against it.

Making archives of the Bank inviolable (secure from assault or trespass or violation);

Providing confidentiality to the official communications of the Bank as accorded by India to the official communications of other member nations.

Immunities and privileges of officers and employees from legal process with respect to acts performed by them in their official capacity

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<sup>7</sup>[https://www.indiacode.nic.in/bitstream/123456789/2406/1/AAA1945\\_47.pdf](https://www.indiacode.nic.in/bitstream/123456789/2406/1/AAA1945_47.pdf)

Providing the Bank, its assets, property, income and its operations and transactions authorized by the Articles of Agreement to be immune from all taxation and from all customs duties and from liability for the collection or payment of any tax or duty. Similar enactments have been made for the ADB by the Asian Development Bank Act, 1966, and for AfDB by the African Development Bank Act, 1983. These enactments by the Indian government provide the required safety and freedom of operation to these MDBs and in turn their expertise and funds are used in India's development.

## CONCLUSION

With the world becoming a global village and human development being the need of the hour, MDBs have a major role to play. However, no perfect legal regime can be laid down for these institutions and they need to evolve as time passes by and the needs change. Overall the existing system though not perfect, has served well and as time goes by the roles of nations change the needs of the world will make changes to the law governing these institutions and hopefully make a near-perfect legal regime if not a perfect one.

