STRUCTURE AND OPERATION OF THE INDEPENDENT ACCOUNTABILITY MECHANISMS (IAMs)

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Introduction

The experiences of the staff and expert reviewers in the approximately 20 international accountability mechanisms are extensive and diverse. They are extensive in the sense that several hundred complaints have led to investigations and final reports. At the same time, the variations of culture and conditions in each of the host institutions require anyone analyzing the 25 years of building this community to draw tentative conclusions. That uncertainty about key operational challenges, however, should not diminish the importance of the development of international accountability as a principle of international relations. The changes in international organizations and their governance is irreversible even if the processes for achieving such reforms are not yet certain.

1. *The structure of IAMs*

The sources of the movement to create independent accountability mechanisms in international organizations in the 1990s came from various directions. Political scientists, including those who worked within development institutions, began to press for the inclusion of a "governance" agenda in the design of portfolios. A seminal work in 1991 from the World Bank focused on the need for accountability of governments

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towards their people as a criterion of greater success in the Bank-supported projects[1]. Western Europe gave a tremendous boost from the creation of ombudspersons in various European countries as well as at the level of the EU[2]. The concept of direct citizen access to those in power set out a new course for democratic expectations. While much of the workload for such mechanisms consisted of common complaints about government services, it fed into a higher expectation of the people towards responsive official organizations. The spirit of the ombudsman movement spilled over into negotiations for international human rights tribunals. The idea that an individual who believed that his human rights had been violated could approach an international legal body for recourse was a substantial change[3]. Even more, it gave concrete channels for the institutionalization of the promises in the United Nations Covenants on human rights negotiated in the 1940s, which had long been viewed as powerless visions. One of the barriers to such broader application of the Covenants was swept away in 1990-1991, when the Soviet Union collapsed and its successor state pronounced the arrival of perestroika. For many anti-democratic governments around the world, the swing of history was palpable, and strong support emerged from many quarters for a broader democratization of both national and global institutions. Finally, the emergence of the "sustainable development" paradigm, initially posited by the Brundtland Commission[4] as primarily a matter of the health of the physical environment, expanded through the growth of international civil society to include the social environment as well. They argued for an integrated vision of people with the environment – each dependent on the other for their respective long-term health – and pressed their case for communities having direct engagement with key development institutions unfiltered by national governments.

[1] D. BRAUTIGAM, *Governance and the Economy: A Review*, in "World Bank Working Paper", December 1991, available at http://documents.worldbank.org/curated/en/640541468766189657/Governance-and-economy-a-review.

[2] D. B. BRADLOW, *The Case for a World Bank Ombudsman*, in "Hearings on Appropriations for International Financial Institutions, US House of Representatives, Banking, Finance, Trade and Monetary policy" (May 1993).

[3] A. A. CANÇADO TRINDADE, *The Access of Individuals to International Justice*, Oxford, Oxford University Press, 2011.

[4] *Our Common Future: Report of the World Commission on Environment and Development*, United Nations, 1987.

The issue of direct access to international institutions was not a trivial demand. The global order in the post-World War II era was built on a concept of enlightened nationalism[5]. Thus the newly-established UN Security Council reflected the need to harness the major world powers to work cooperatively for peace and security. When the Bretton Woods Conference created the World Bank and the IMF, a similar approach apportioned control of the institutions according to the financial weight of each country. Other international institutions fell in line with the need to recognize the existing powers in international relations, whether in trade, in health, in transport, in arms control, or other key sectors of global life. The paradigm only encountered vigorous debate in the 1990s, fifty years after World War II. When the weaknesses of the sovereign nationalist structure became apparent, many of the intergovernmental institutions seemed unable to evolve.

Accessibility was identified by civil society as key criterion for any movement towards greater accountability. Without the ability to present a concern directly, an ordinary citizen found his complaint deflected or watered down by going through his own government. But the legal charters of all the international organizations expressly limited access to the designated representatives of member governments. The breakthrough for public accessibility had to come from the most unlikely organization to make such a change – namely, the World Bank. Banks are notoriously secretive. There is no tradition of the public being welcome to know about or participate in the affairs of private or public banks around the world. But public banks owned by government shareholders could not hold out forever in the face of the movement towards open government. Their public mandate provided a handle for civil society to threaten them with de-funding through global and nationally-based movements that "Fifty Years is Enough", as done with the World Bank[6]. The Bank caused well-publicized scandals in the early 1990s, pursuing dam projects in India that would displace over 100,000 people in the Narmada Valley[7]. The Bank acknowledged a majority of its

5 I. L. CLAUDE, *Power and International Relations*, New York, Random House, 1962.

6 K. DANAHER (ed.), *50 Years is Enough: The Case Against the World Bank and the International Monetary Fund*, Boston, South End Press, 1994.

7 B. MORSE, T. R. BERGER, *Independent Review of the Sardar Sarovar Projects*, in "Resource Futures International", 1992.

funded projects could not be evaluated as "successful"[8]. In that environment, the General Counsel of the Bank led an internal process with the Board and Management to legitimize public access through a new accountability mechanism[9]. It saved the Bank, but it also changed the culture of the bank fundamentally, and inspired similar mechanisms across the world of development finance[10].

The greatest culture change, as it turned out, was to pursue the concept of transparency in Bank processes. As noted above, banks had never operated in an atmosphere of openness and public information access. The open government movement globally enshrined in "sunshine laws" was extended to international institutions. After all, how could a person complain if she could not identify bank-financed projects, or assess the design documents with greatest impact on her? After some extended negotiations over years, development institutions put in place access to information policies that established an approach whereby all documents would, by default, be public unless there was a valid business reason for maintaining confidentiality. Detailed policy documents were enacted by the Boards of Directors to establish the principle of openness as well as the areas that might be withheld. For instance, the first documents to be released were environmental impact assessments that covered a wide range of social and environmental issues. Then planning documents listing projected lending for projects were released so the public would be aware of future challenges that might emerge. Then evaluation documents were released so the public could better know how the Bank was performing. The movement towards transparency has gradually encompassed the vast majority of internal Bank documentation, a vital aspect of engaging the public in its deliberation[11]. Challenges still remain – *e.g.*, most documentation is

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[8] World Bank Portfolio Management Task Force, *Effective Implementation Key to Development Impact* (R92-125), 3 November 1992.

[9] The story of the Panel's establishment is recounted by the General Counsel, in I. F. I. Shihata, *The World Bank Inspection Panel*, World Bank, 1994, available online at http://documents.worldbank.org/curated/en/967841468764401525/The-World-Bank-inspection-panel .

[10] R. E. Bissell, *Recent Practice of the Inspection Panel of the World Bank*, in "American Journal of International Law", 1997, pp. 741-744.

[11] See World Bank, *Making Politics Work for Development: Harnessing Transparency and Citizen Engagement*, 2016.

still available only in English, and where the need is obvious, in one national language. But that doesn't meet the need in many multi-lingual countries. The information is also too often buried in documents that are hundreds of pages long, defying any average citizen to make sense of it. Finally, transparency becomes less predictable as implementation of projects is led by local partners, whether government agencies or the private sector, with less motivation to follow the policies of financiers on transparency.

The limits of transparency highlight the challenge of extending the principle of accountability to the grassroots. Since the original focus of the IAM development was to provide relief to communities that suffer harm from international development projects intended to benefit them, there is considerable variation in how effective the IAMs can be in remote areas. It is much easier for people living in cities with access to education, the media, and the offices of the financiers and project implementers to find relief from a project. Support can be obtained in cities from civil society organizations. Meetings can be arranged with the powers that be. For those who live "at the end of the road", the obstacles to awareness, information, communications, and resources are around them at all times. While relatively inexpensive social media and telephones have made such tool more pervasively accessible, the more remote populations have an inherent disadvantage, leaving those in rural areas and urban slums with minimal recourse. There are exceptions among the successful complainants, such as the char people in Bangladesh who successfully approached the World Bank Inspection Panel in 1996 to force a rewrite of the resettlement action plan[12], but the overall record is generally rather dismal for the rural poor.

One of the unintended effects of the emergence of international accountability mechanisms has been to focus the spotlight on marginalized populations around the world. The definition of "marginalized" is determined by the realities of the cultural context for each project. Most development institutions developed safeguard policies to provide protections for marginalized or weak populations as though the standards could be universally applied. Those policies focused initially on those

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[12] WORLD BANK, INSPECTION PANEL, *Report and Recommendation – Bangladesh: Jamuna Bridge Project* (Credit 2569-BD), 26 November 1996.

who were resettled involuntarily, the various indigenous peoples around the world, and those who depend on a threatened environment for their livelihood. In the last few decades, further expansion of such policies has included labor rights and occupational safety, women and gender, and human rights in general. But to take just one example: not all countries agree on what constitutes an "indigenous person". Thus Brazil has a clear category of such people, with a separate government ministry dedicated to their welfare. At the same time, most African countries deny the existence of indigenous peoples within their borders, thus preventing the African Development Bank from even having a policy on the topic[13]. In other parts of the world, a government may protest the designation of women as marginalized even though they lack the ability to hold bank accounts, they are married off as children, and their legal persona is controlled by male relatives. Efforts to provide them safeguard protections in development projects are too often rebuffed.

The central role of the environment in the launch of international accountability mechanisms has both facilitated their growth as well as complicated it. Since the environment has no single recognizable "voice", many claim to speak for it. There are many perspectives about the role of our planet earth in philosophy, in long-term planning, and in meeting the short-term needs of seven billion people. Should the environment be preserved as mankind found it? Should it be conserved through careful exploitation? Are natural resources there for mankind to use as it pleases without regard for future generations? Through many international deliberations, a set of general principles has evolved, but their application in any given situation lays bare the fundamental disagreement over the priority approach to take. These disputes have no international governing body with the authority to settle, and therefore migrate into the hands of the delicate institutions that are available – such as the international accountability mechanisms. When a dam project is proposed for a remote area of Panama, with the reliance of indigenous peoples on a symbiotic relationship with a particular section of land for both economic survival and cultural integrity, how does an IAM resolve the dispute between those people, the power company, and the

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[13] See: https://www.afdb.org/en/documents/document/afdbs-integrated-safeguards-system-policy-statement-and-operational-safeguards-34993/

government? In the first years of the IAMs, the environmental policies of the multilateral development banks moved fairly rapidly toward a consensus, through the actions of the IAMs, and represented a breakthrough in reducing international and internal conflicts. Within the last decade, however, that consensus has shown signs of unraveling with the emergence of new international powers that have a different interpretation of the relationship between man and the environment.

What is remarkable, despite the shifting views about interpretation of specific policy areas, is that governing authorities of international institutions agree on the value of maintaining a window into their operations that allows and responds to public complaints. There is now agreement that each project and program should have a layered set of mechanisms to mitigate issues that inevitably arise in all development projects. Those layers include a grassroots complaints office to fix the cracks in houses caused by heavy machinery; they include a local/national appeals mechanism to respond to what the public believes is an inadequate response at the local level. And they include a mechanism where any financing is provided by an external organization (bilateral or multilateral, public or private) for an independent review of the decisions taken in the project as to whether they meet both institutional and international standards. What are those standards? Interestingly, the first 15 years of the existence of the IAMs drove rapid *de facto* agreement on what they are. With the creation or reorganization of each IAM, there has been a process of reviewing current policies across all international organizations so as to adopt the "state of the art." The learning process that thus ensued between one institution and another was collectively unplanned, but is visible in the deliberations of each board as the members considered optimizing the accountability function. Rarely has there been such a virtuous circle of improvement in the aspirations of all people, carried out through pragmatic channels rather than high-level diplomacy. And the process is still underway.

The iterative changes in the global scene of IAMs create both challenges and opportunities. The emergence of new financial powerhouses on the development landscape – as with China in the last decade – initially created concern about threats to the accountability consensus[14].

[14] C. WOLF, JR., X. WANG, E. WARNER, *China's Foreign Aid and Government-*

Like most nationalist powers, the instinct of Chinese economic diplomacy was to reject what were seen as "Western norms." Yet the evidence of the value of the generally accepted international norms could be seen in the projects that the Chinese developed domestically. Issues of involuntary resettlement became sources of public unrest over the Three Gorges Dam. The problem of inadequate pollution management in the course of industrialization led to a public health crisis in major cities. With evidence of the importance of paying close attention to social and environmental damage, China shows concrete signs of taking steps to strengthen the ability of the world to work collectively, bilaterally, and nationally to shift the cost-benefit ratio of development projects in a positive direction, especially with regard to collateral, unanticipated harm to the people. The norms built into the Asian Infrastructure Investment Bank are a recent harbinger of the acceptability of IAMs[15].

2. *Challenges*

The existence of external accountability mechanisms will always give rise to some degree of unhappiness from Bank management and staff, as well as from borrowing countries. This resistance to an additional layer of oversight inevitably arises in project-specific situations. But there is decreasing resistance to the existence of the IAMs themselves. Instead, attacks have increased on the underlying policies that provide a standard for IAMs to use in measuring compliance. In the executive boards of the multilateral financial institutions, intense debates occur where policies are proposed for adoption or for revision. In recent years, two principal lightning rods have been the topics of human rights and energy/climate change. Policies on human rights have only recently been proposed, owing to the long-time position of the World Bank that it was a "political topic" and therefore outside the authority of the Bank to take a position. In fact, the existing safeguard policies on the books

Sponsored Investment Activities: Scale, Content, Destinations, and Implications, Rand Corporation, 2013.

[15] R. J. HANLON, *Thinking about the Asian Infrastructure Investment Bank: Can a China-Led Development Bank Improve Sustainability in Asia?*, available on line at http://onlinelibrary.wiley.com/doi/10.1002/app5.186/full.

of the banks already addressed various aspects of human rights, but in the guise of economic issues. So it was only a matter of time that the various strands would begin to coalesce into a broader commitment to a policy on human rights. One harbinger of the trend was the adoption of the social and environmental standards at the UN Development Programme, where human rights were enshrined in the first paragraph as an essential driver for all specific standards that followed[16]. Today, the debate is really over implementation – identification of the best approach to a "human right impact assessment" tool that could be adopted across the global financial community as part of its normal due diligence process for any new investment[17].

International accountability faces a contextual challenge from the massive expansion of the share of international financial flows coming from the private sector. The shift away from public sources of finance (whether bilateral or multilateral) towards non-public banks and corporations has been well documented by the OECD[18]. As noted above, one of the rationales for international accountability mechanisms was the public status of the underlying institutions. That premise does not apply equally to private institutions. Instead, the accountability movement has attached itself to the social responsibility mandate of modern corporations and banks. While social responsibility provides fertile ground in which to plant the seed of public accountability, it does not necessarily ensure the level of transparency achieved with the public institutions. Thus projects financed by private entities are not yet open to scrutiny in a comparable way. Creating that openness is an opportunity for growth of international accountability; some banks and corporations have stepped up the release of information, and even established relatively independent accountability mechanisms[19]. In the short-term, the gap between the public and private sector over policies as well as accountability processes means that tensions rapidly arise in public institutions with a strong private sector focus, *e.g.*, the International Fi-

[16] See http://www.undp.org/content/undp/en/home/operations/social-and-environmental-sustainability-in-undp/SES.html.

[17] See, for instance, https://www.humanrights.dk/business/tools/human-rights-impact-assessment-guidance-and-toolbox.

[18] See http://www.oecd.org/dac/financing-sustainable-development/development-finance-data/.

[19] See https://www.fmo.nl/independent-complaints-mechanism.

nance Corporation and the European Bank for Reconstruction and Development.

International accountability, after 25 years of experience, can gain from modernizing its systems. For instance, the opportunities embedded in new technologies are rapidly overcoming the remoteness of much of the world. The ability to reach the general public and to communicate inexpensively is only slowly taking hold among IAMs. The fact that two billion people world-wide use Facebook illuminates a common tool that is not alone – close behind is WhatsApp with 1.3 billion users[20]. People potentially affected by development projects are much more commonly connected with their compatriots and potentially with mechanisms that can assist them. Today, real-time monitoring of large projects can be conducted on the ground by local people, and shared across the world in a matter of seconds, a phenomenon known as crowdsourcing. Civil society has also found opportunities in remote sensing that were formerly unaffordable. The first IAM case where remote sensing was utilized was the Rondonia project of the World Bank in Brazil in the 1990s[21]. The demonstration of deforestation by satellite observation, in areas of indigenous set-asides violated by loggers, brought global attention to the otherwise unseen crisis in the Amazon. Today, the ability to orbit very small and inexpensive satellites is within the reach of many organizations. The pace of new technology development will constantly open up new opportunities.

Finally, the rise of partnerships, whether in financing, management or implementation, is leading to some instability of social and environmental norms. The implicit power shift in such partnerships creates opportunities for discord among the various "owners" of the project. One of the underlying themes of recent World Bank policy revisions, for instance, has been to transfer control of various project stages to some clients and borrowers: at the design stage, through national systems of policies, and at the implementation stage, through country-driven oversight and management. Loss of policy clarity also occurs among the proliferation of projects with multiple major financiers; who prevails in

[20] See https://www.statista.com/statistics/272014/global-social-networks-ranked-by-number-of-users/

[21] WORLD BANK INSPECTION PANEL, *Request for Inspection - Brazil: Rondonia Natural Resources Management Project*, Panel Recommendation (INSP/R95-2)", August 18, 1995.

the dialogue as problems arise? Executive boards are opposed to ceding policy primacy to other institutions as a matter of principle. At its worst, such disparities can lead to comparative shopping in standards – borrowers will seek out lenders with the weakest safeguard standards, and civil society will appeal to those with the strongest standards. There are thus contrary trends in process, where the acceptability of international accountability mechanisms is rising while the integrity of the standards and policies that shape their work is encountering turbulence.

Conclusions

The attempt of nationalist forces to erode global standards may have some success. But it may also have an indirect effect in stimulating like-minded organizations and countries to collaborate on common social and environmental policies, along with associated accountability mechanisms. The phenomenon of emerging IAMs in the last 25 years has left its mark by raising the expectations of many institutions as well as civil society that those policies have become core activities of development institutions who wish to ensure their investments have sustainable impacts.

Riassunto - L'inserimento, negli anni '90, dei cosiddetti "meccanismi indipendenti di responsabilità" (IAMs) nelle organizzazioni internazionali ha diverse origini. Un lavoro seminale del 1991 della Banca Mondiale si concentrava sulla necessità di responsabilizzare i governi nei confronti dei cittadini come condizione di maggior successo dei progetti promossi dalla Banca stessa. Se la maggior parte dell'attività derivante da tali meccanismi consisteva nel rispondere a reclami concernenti servizi governativi, essa alimentava a sua volta le aspettative dei cittadini per quanto riguarda la reattività delle organizzazioni pubbliche. L'idea che un individuo che riteneva violati i propri diritti umani potesse ricorrere a un organismo internazionale costituiva una novità sostanziale. È inoltre rilevante il fatto che le istituzioni internazionali attribuiscano valore al fatto di "aprire" le proprie operazioni così da consentire che le denunce vengano effettuate e che a esse sia data risposta. La responsabilità internazionale, dopo 25 anni di esperienza, può infine trarre vantaggio dalla modernizzazione dei sistemi: le opportunità offerte dalle nuove tecnologie, ad esempio, stanno rapidamente annullando le distanze in gran parte del mondo.