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* This paper is based on a presentation made at the panel discussion on "The Impact of International Civil Society on the World Bank, the IMF, and the WTO" on the occasion of the International Law Weekend 2000 "International Law in the 21st Century: The United Nations and Other International Entities" held on October 26-28, 2000 in New York City, New York. The views expressed in this paper are those of the author and should not be attributed to the institutions with which she is affiliated. The author has deliberately broadened the topic of the panel discussion for her presentation and paper and referred to "civil society" as opposed to "international civil society" in order to include in her presentation and paper a discussion of the manner in which the World Bank interacts with people and NGOs in its borrowing member countries, i.e. local civil society. In the World Bank, the reference to "civil society" generally included a role of associations, social norms and practices that comprise activities of a society on an organizational basis representing social groupings and being separate from its state and market institutions. The World Bank's dialogue with civil society, however, is generally restricted to groupings with an economic, social, and developmental agenda.

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I. INTRODUCTION

Since the 1980s, the international community has both in theory and in practice called for reform of the development process.\(^1\) Development, it was felt, would only be sustainable if an enabling participatory environment in a country and appropriate accountability mechanisms of the country's government were existing.\(^2\) Very soon, similar calls for participation of affected people and their representatives, \(i.e.,\) the local and/or international civil society, in development assistance processes supported by international development agencies, and calls for mechanisms in these organizations that would ensure these organizations' accountability to the local and/or international civil society were expressed.\(^3\) While international development agencies have introduced innovations in terms of participation and accountability on the basis of their own internal conviction that change to adjust to new challenges is needed as well as in response to the external calls for reform, the recent demonstrations at the World Bank and the International Monetary Fund Spring and Fall 2000 Meetings show that in the view of many outsiders changes made are not sufficient in an era of continued, even in some places increasing, poverty despite a trade and investment boom under the new international framework for trade.\(^4\)

This paper will, first, lay out the legal framework for "interaction" between the Bank and civil society both local and international; second, describe the evolution of such "interaction" in practice; third, assess the impact of local and international civil society on the Bank; and, fourth and finally, share some reflections on future developments for the relationship between the Bank and local and international civil society.

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2. *See, e.g.*, Olusegun Obasanjo, Democracy and Good Government - Basis for Socio-Economic Development (Lecture Delivered at the Vienna Social Issues Forum Oct. 24, 1991) (arguing that sustainable development in developing countries requires both "empowerment and capacity building of and for the people").


4. For details regarding the major changes in the World Bank's operations in terms of participation and accountability, *see* 3 IBRAHIM F.I. SHIHATA, THE WORLD BANK IN A CHANGING WORLD (2000).
II. LEGAL FRAMEWORK FOR "INTERACTION" BETWEEN CIVIL SOCIETY AND THE WORLD BANK

Under its Articles of Agreement, the World Bank\(^5\) was created as an international development finance institution. Its purposes are to finance the economic and social development of its borrowing members.\(^6\) It is prohibited from taking political considerations into account in its lending decisions.\(^7\) The Bank finances development by primarily making loans and guarantees for specific programs and projects to member governments.\(^8\) When it makes a loan or gives a guarantee on repayment of a loan to a private business, \textit{i.e.}, a borrower or recipient of a guarantee other than a member government, an additional guarantee by the government in whose territory the project to be financed is located is required.\(^9\)

In essence, the Bank's operations may be described as the Bank's entering into contractual relations with borrowing member governments, or with private business provided the member government in whose territory the project will be executed supports this contract through a guarantee. In practice, the vast majority of Bank operations consist of loans to borrowing member governments.

The Bank's charter explicitly provides for "[d]ealings between members, \textit{i.e.}, the members' treasury, central bank, stabilization fund or other similar fiscal agency" for the entering into loan and guarantee contracts with the

\(^5\) The term World Bank is used here to mean the International Bank for Reconstruction and Development (IBRD) and the International Development Association (IDA), unless the context indicates otherwise.

\(^6\) In the words of the Bank's Articles of Agreement, the Bank's express purposes are to "facilitate the investment of capital for productive purposes," "to promote private foreign investment for productive purposes," and to "encourage 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." \textit{See IBRD's Articles of Agreement, art. I, available at http://www.worldbank.org/html/extdr/backgrd/ibrd/art1.htm (last visited Mar. 17, 2001) [hereinafter IBRD]; compare also IDA's Articles of Agreement, art. I, available at http://www.worldbank.org/html/extdr/backgrd/ibrd/art1.htm (last visited Mar. 17, 2001 [hereinafter IDA], which, to a certain degree, uses similar language.}

\(^7\) The relevant provision of the Bank's Articles of Agreement state that "the Bank and its officers shall not interfere in the political affairs of any member, nor shall they be influenced by the political character of the member or members concerned" and that "only economic considerations shall be relevant to [the Bank's] decisions." IBRD, supra note 6, at art. IV, § 10; IDA, supra note 6, at art. V, § 6.

\(^8\) IBRD, supra note 6, at art. III, § 4, with IDA, supra note 6, at art. V, § 2 (limiting the Association's form of financing to loans). According to its Articles of Agreement, the Bank enters into loan and guarantee agreements with governments, (or any political sub-division thereof) of its member countries. \textit{See IBRD, supra note 6, at art. IV, § 10; IDA, supra note 6, at art. V, § 6.}

\(^9\) Compare IBRD, supra note 6, at art. III, § 4, with IDA, supra note 6, at art. 5, § 2(d) (leaving the requirement of a government guarantee up to the discretion of IDA).
members. The charter provides further that the Bank shall cooperate "with any general [public] international organization and with public international organizations having specialized responsibilities in related fields."

Neither the contractual loan and guarantee related relationship nor the cooperation with other international organizations, as envisaged under the Bank's Articles of Agreement, include clauses on contracts with, or participation by, affected people, local, or international civil society. No other provision in the Bank's Articles of Agreement contemplates contracts between the Bank with, negotiation of contracts with, or participation in the operations of any nature by, people potentially affected by Bank-financed projects, or local civil society. Nor is cooperation with civil society in other respects envisaged. From the supervisory perspective of Bank operations (or the perspective of checks and balances between Bank Management and the Board of Executive Directors which supervises Management in the realization of the Bank's operations), no possibility of, or requirement for, people from borrowing countries or civil society to participate in this supervision by the Board of Executive Directors of Management is envisaged by the Articles of Agreement.

III. EVOLUTION OF "INTERACTION" BETWEEN CIVIL SOCIETY AND THE BANK IN PRACTICE

Despite the silence of the Bank's charter regarding participation of civil society in the Bank's work or accountability by the Bank to civil society, participation of and accountability vis-à-vis civil society has evolved over the years. Thus, while no voice has been contemplated for civil society according to the Bretton Woods Agreement under which the Bank was created in the 1940s, civil society, by now, has a voice in the Bank's activities. The voice given to civil society in practice does, however, not yet reach as far as scholars and parts of civil society have called for; its overall scope, nevertheless, is quite remarkable.

Participation of civil society exists in many areas of Bank operations and keeps expanding although it takes the form of "meaningful consultation" rather than participation in the sense of vesting full or partial powers of decision-making in civil society. It does not mean negotiation and does not imply a
priori acceptance of the views of the consulted civil society. Similarly, accountability mechanisms developed in the Bank’s context do not go as far as outsiders ask for, i.e., they do not enable civil society to ask for redress or remedy of harm it has either suffered itself, or asks for on behalf of people adversely affected by development projects.

A. Participation of Civil Society in the Bank’s Work

Since the 1980s, participation of civil society has been made possible and has, in some instances, even been made mandatory in connection with project-lending by the Bank. For several years now, it has been part of the policy-making process. It further, since recently, exists in the context of adjustment-lending. It is also part of the policy-dialogue, i.e., the dialogue on medium-and long-term lending program, in which the Bank engages in with its borrowing member governments. Finally, further informal dialogue with NGOs and civil society with the Bank is evolving in conjunction with events organized by the Bank, e.g. seminars on research and policy evaluation, the Bank/Fund joint Board of Governors’ meetings, and sector strategy paper formulation.

The Bank has built participation into the so-called project cycle which characterizes its lending activities for development. The project cycle consists of several stages: 1) selection of the project to be financed; 2) design and preparation of the selected project; 3) appraisal of the project (plus following approval of the loan financing the project); 4) implementation of the approved project; 5) supervision of the project’s implementation; and 6) evaluation of the project. Each, the Bank and the borrower, has a specific role in the project cycle. The selection of the project is both the Bank’s and the borrower’s task. Design and preparation of the project is the borrower’s responsibility. Appraisal of the project is done by the Bank. Implementation of the project is the borrower’s responsibility while the supervision of the implementation rests with the Bank as well as project evaluation.

13. Id.
16. For a description of the project cycle, see WARREN C. BARUM, THE PROJECT CYCLE (1982).
The inclusion of a diversity of stakeholders other than the borrowing member's government is, according to Bank policies which bind Bank staff and which bind also the borrower after their incorporation into loan agreements, made an obligation at particularly two stages of the project cycle, i.e., the preparation and implementation of the project. As these stages fall into the responsibility of the borrower, the Bank requires the borrower to ensure participation of ultimate beneficiaries of the projects it finances.

For example, during the design and preparation of a hydro-electric dam project, Bank policies and procedures require the undertaking of environmental studies, the elaboration of resettlement plans, and the identification of indigenous people. Participation in the context of such studies and plans will involve consultation with the people living in the area proposed as the construction site of the dam as well as with local non-governmental organizations (NGOs) to determine the environmentally most sustainable framework for the project, elaborate appropriate resettlement measures, and work out protection measures for indigenous people. Again, during the execution of the Bank-financed project by the borrower or its sub-contractors, for example, a resettlement plan will have to be followed, people moved from one location to the other will have to be compensated for any losses, and people will have to be consulted in the course of the implementation of the project.

It may be noted that Bank policies on disclosure of information to the outside greatly facilitates the ability of beneficiaries of projects, local and international civil society to be involved in Bank's projects and offer their views, especially beyond what the Bank is required to ask for.

Participation of civil society has been for years a regular feature in the Bank's formulation of new policies, its conversion of operational directives and

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17. See SHIHATA, supra note 14, at 41-49 (discussing the legal nature and function of Bank policies and procedures in detail).
18. See, e.g., The World Bank Operational Manual, Operational Policies: Environmental Assessment, OP 4.01 (1999) (standardizing a process in which projects to be financed by the Bank undergo a specific assessment to ensure that the environmental effects of Bank-financed projects are discovered as early as possible in the project cycle and that measures are incorporated to minimize, mitigate or compensate for adverse impacts of the projects or to enhance their environmental benefits).
19. See The World Bank Operational Manual, Involuntary Resettlement, OP 4.12 (1999) (establishing procedures to ensure that the population displaced by a project receives benefits from it by compensating them for their losses, assisting them with the move and their efforts to improve their former living standards, income earning capacity, and production levels, or at least to restore them).
other older instruments into operational policies and procedures, or the latter's amendments.\footnote{For a detailed description of the conversion process of Bank policies, see Shihata, \textit{supra} note 14, at 41-46.}


The Structural Adjustment Participatory Review Initiative (SAPRI), as this review is called, was launched in 1997.

The Country Assistance Strategy (CAS) is the primary tool in the Bank prepared for all borrowing countries considering lending from it. The CAS report contains a description of the countries' priorities and the composition of assistance required. It is prepared with the participation of the government. In some instances, civil society, the private sector, and other country stakeholders are consulted about the CAS contents before consideration by the Bank's Board. In July 1998, the Bank's Board directed Bank staff to publicly disclose CAS reports at the request of governments.

In the vein of implementing the Comprehensive Development Framework (CDF), the Bank is also working in partnership and in a dialogue with a variety of partners, including civil society.\footnote{See The World Bank Group, \textit{Comprehensive Development Framework}, available at www.worldbank.org/cdf (last visited Mar. 17, 2001). For description and analysis from a legal perspective, see Sabine Schlemmer-Schulte, \textit{The World Bank and Human Rights}, 4 \textit{Aus. Rev. of Int'l & European L.} (ARIEL) 230, 252-255 (1999).} The CDF, introduced in January 1999 by the Bank's President James D. Wolfensohn, proposes a long-term holistic approach to development. It acknowledges a country's macroeconomic fundamentals but stresses further the importance of the institutional, structural, and social underpinnings of development. As a process and tool for development effectiveness, the CDF emphasizes strong partnerships among governments, donors, civil society, the private sector, and other development actors working toward the goal of poverty reduction.

The growing rather informal dialogue between the Bank and civil society beyond project-lending, policy formulation \textit{stricto senso}, adjustment strategy review, and policy dialogue (CAS and CDF), relies primarily on several focal points within the Bank, \textit{e.g.} its NGO unit to establish and organize a dialogue, or its office for external relations. However, frequently, the specialized networks in the Bank, when they feel this to be opportune, initiate themselves
the contracts with relevant specialized NGOs or particular parts of civil society to receive comments on draft sector strategy papers or discuss research.

In conjunction with major institutional reform on new initiatives, the Bank often receives unsolicited comments from NGOs and civil society, or engages deliberately in a dialogue with outsiders. Such dialogue, for example, occurred on the occasion of the establishment of the Inspection Panel itself as well as Bank internal reviews of the experience with it. A similar dialogue is taking place in conjunction with major Bank events, e.g., the joint Bank/Fund Board of Governors' meetings.

From a legal point of view, it is important to note that participation of civil society, i.e., mainly beneficiaries of Bank-financed projects and local NGOs concerned with the projects for the purposes of the Bank's operational work, and local and international NGOs when it comes to adjustment strategies and policy-making, is defined in terms of meaningful consultation with civil society before the Bank takes a decision on the financing of or measures for the supervision of the projects it supports, or on the design of strategies and contents of policies. That means that the Bank gives civil society the opportunity to comment on projects, strategies and policies before those are submitted for approval to its decision-making organ. Consultation in this context does not mean negotiation and it does not imply acceptance of the views of the consulted party or a mandatory influence (in whatever form) on the decisions taken by the Bank. However, it means receiving adequate information from the ultimate project, strategy, and policy beneficiaries and their spokesmen, listening to them with an open mind and readiness to take their views into account before the Bank reaches its own conclusion.

The organ of the Bank which is mostly consulting with stakeholders from civil society is the Bank's Management. It is the Bank's Management which is giving project beneficiaries and NGOs the opportunity to express their views and concerns regarding projects and programs financed by the Bank. It is also Management calling for comments in the formulation of strategies and policies. Participation of or consultation with project beneficiaries and NGOs is thus, as a general rule in the Bank's practice, tied to Management's work, i.e., the organ which conducts the ordinary business of the Bank according to its charter.26 As an exception from this rule, the Board of Executive Directors, i.e., the Bank's principal decision-making organ, has recently also allowed for comments by NGOs before taking a decision on the second review of the Inspection Panel.27 Nevertheless, whatever organ has listened to Bank outsiders, such listening has always taken the form of consultations as any other influence on the decision-making procedure of the Bank impairing on or interfering with the decision-

26. IBRD, supra note 6, at art. IV, § 10; IDA supra note 6, at art. V, § 6.
27. For details, see SHIHATA, supra note 14, at 196-199.
making powers of Bank organs would have been in violation with its Articles of Agreement.

B. The Bank's Accountability to People Affected by Bank-Financed Projects

The Bank does not establish any contractual relations with the ultimate beneficiaries of the projects it finances. It also does not take any actions vis-à-vis them. Nevertheless, it can be the Bank's failure to comply with its own standards, e.g. having failed to properly supervise the implementation of a project that could potentially result in harm to people.

Before the Inspection Panel was established, people adversely affected by such failures could, of course, write to the Bank's Management and ask for appropriate actions to stop such harm but no institutionalized, independent complaint mechanism for them existed.

To enhance the Bank's accountability vis-à-vis project beneficiaries as well as to improve the Board's ability to supervise Management, the Bank established in 1994 the Inspection Panel.\(^{28}\) The Inspection Panel provides a formal mechanism for people directly affected by Bank-financed projects to bring complaints before it on grounds of the Bank's failure to abide by its own policies and procedures in the design, appraisal and implementation of the projects it finances.\(^{29}\)

The Panel's role is in principle to be performed in two stages. In the first stage, the Panel registers the request provided it is not frivolous or manifestly outside the Panel's jurisdiction. Management, thereafter, has the opportunity to respond to the request. Then, the Panel has to assess whether the request for inspection meets the eligibility requirements of the Resolution.\(^{30}\) The main eligibility requirements include that the request must have been brought by a group of project beneficiaries from the territory of the borrowing member, that it relates to a failure of the Bank to comply with its own policies and procedures, and that harm for project beneficiaries has or is likely to result from that Bank failure.\(^{31}\) A local NGO can bring the complaint on behalf of affected

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31. In the first stage, the Panel has to establish four elements of jurisdiction, the first of which does
people.\textsuperscript{32} In case local representation is not available, an international NGO can, with the approval of the Bank’s Executive Directors, bring the complaint.\textsuperscript{33} On the basis of the eligibility assessment, the Panel recommends to the Executive Directors whether to authorize an investigation.\textsuperscript{34}

In the second stage, which takes place only after the Board authorizes an investigation, the Panel carries out its investigation and reaches its findings on whether the Bank has been in serious violation of its operational policies and procedures with respect to the design, appraisal and/or implementation of the project involved.\textsuperscript{35} If the Panel finds Bank failures in its investigation, Management may propose corrective measures or the Board may decide on such measures.\textsuperscript{36} That latter decision is, while binding on Management, resulting from the Board’s discretionary power to supervise Management. It is not the enforcement of a right of project beneficiaries to such corrective measures. Management’s own proposal on corrective measures is based on Management’s duty to conduct the Bank’s day-to-day operations properly according to the applicable rules.

It must be emphasized that the concept of the Inspection Panel is, unlike the concepts of liability under domestic law or international responsibility under international law, not based on the philosophy of legal action and remedies.\textsuperscript{37} This means that the essence under the old maxim of “\textit{ubi jus, ibi remedium},” \textit{i.e.}, that someone who has been wronged by another has a right to be remedied

\begin{itemize}
\item [32.] Inspection Panel, \textit{supra} note 28, \textsection 12.
\item [33.] \textit{Id.}
\item [34.] \textit{Id.} \textsection 19.
\item [35.] The Panel conducts the investigation by checking pertinent Bank records, interviewing Bank staff and other persons and, if needed, carrying out an investigation in the territory of the borrowing country with the borrowing country’s consent.
\item [36.] \textit{Id.} \textsection 23.
\item [37.] For a detailed analysis between the Inspection Panel’s accountability concept and the concept of legal liability, see IBRAHIM F.I. SHIHATA, THE WORLD BANK INSPECTION PANEL: 106-15 (1994), and THE WORLD BANK INSPECTION PANEL: IN PRACTICE (2nd ed. 2000). See also 2 SABINE SCHLEMMER-SCHULTE, THE WORLD BANK INSPECTION PANEL: ACCOUNTABILITY TO NON-STATE ACTORS, TRANSLEX, 1 (1999) (discussing the distinction between the concepts of accountability, liability, and international responsibility in connection with the activities of international organizations in general and the Bank’s work and its Inspection Panel mechanism in particular).
\end{itemize}
and will receive an enforceable court judgment if he brings an action before the court requiring the wrongdoer to correct the wrong, compensate the wronged, or put him in the position he was before the wrongdoing occurred, does not apply to the Panel.\textsuperscript{38} By contrast, the accountability concept, for which the Inspection Panel stands, is essentially not a remedy concept.\textsuperscript{39} It does not give a right to remedial measures and it also does not provide for a corresponding enforceable judgment.\textsuperscript{40}

By contrast, the concept of legal liability under domestic law is a legal remedy. Under this concept, an action could theoretically be brought against the Bank by any individual having standing under domestic law on the basis of applicable domestic law (\textit{e.g.} on the basis of the law of contracts, torts, or lender liability) in a domestic court.\textsuperscript{41} The latter would, if the claim is valid on its merits, require the defendant to take remedial measures (\textit{e.g.} pay damages or give restitution). In practice, such action can, however, not be brought against the Bank as the Bank is immune from suit in domestic courts with respect to its operational activities and is not likely to waive its immunity.\textsuperscript{42}

While, like states, international organizations such as the Bank are in principle responsible for any breaches of their international obligations under an international agreement to which they are a party or an established principle of customary international law applicable to them adversely affecting individuals' rights, the establishment of any such international responsibility on the part of the Bank \textit{vis-à-vis} non-state actors meets in practice insurmountable obstacles.\textsuperscript{43} There is in particular no judicial international forum before which individuals could bring claims against the Bank for violation of international

\textsuperscript{38} See Sabine Schlemmer-Schulte, \textit{The World Bank, its Operations, and its Inspection Panel}, 45 Recht der Internationalen Wirtschaft (RIW) 175-81, 180 (1999). See also AVERY LEISERSON, RESPONSIBILITY IN A DICTIONARY OF THE SOCIAL SCIENCES 599, 600 (Julius Gold & William L. Kolb eds., 1964) (discussing the distinction between accountability and legal responsibility and, in this context, pointing out that legal responsibility includes the elements of an obligation, the breach of that obligation, harm caused to third parties by the breach, and the duty to remedy the harm, while accountability does not include the element of liability for harm caused to third parties).

\textsuperscript{39} See Schlemmer-Schulte, \textit{supra} note 38.

\textsuperscript{40} Id.

\textsuperscript{41} Id. at 181. See also SHIHATA, \textit{supra} note 14, at 241-258.

\textsuperscript{42} As a general matter, the Bank is under its Articles of Agreement and its Headquarters and Establishment Agreements it entered into with the countries where its headquarters or resident missions are located, immune from suit in domestic courts with respect to its operational activities. IBRD, \textit{supra} note 6, at art. IV § 10; IDA, \textit{supra} note 6, at art. V, § 6.

legal standards conferring rights on them even if a borrowing country would espouse such a claim against the Bank.\textsuperscript{44}

\section*{V. ASSESSMENT OF THE IMPACT OF CIVIL SOCIETY ON THE BANK}

Participation in project-lending, adjustment strategies, and policy-making has been introduced by the Bank on the basis of the conviction that broad consultation with many stakeholders and their advocates enhances its operations' impact on poverty reduction and increases its activities' sustainability. Likewise the new accountability mechanism of the Inspection Panel entertaining complaints by third party non-state actors over Bank failures has been established in order to improve the Bank's portfolio performance.

From a quantitative point of view, it may be noted that the extent of NGO participation in some capacity in the Bank's operations goes beyond fifty percent of the operations approved every fiscal year.\textsuperscript{45} Over 500 NGOs are participating in the review of the structural adjustment initiative. As of the end of fiscal year 1999, all SAPRI countries have held national forums in seven countries, organized by multi-stakeholders follow-up committees.\textsuperscript{46} Local NGOs in three other countries are conducting their own debates and research through their involvement in a global NGO network set up to follow up the SAPRI exercise. This process is expected to culminate in a global forum sometime in 2000.\textsuperscript{47} Of the twenty-five CASs prepared during fiscal year 1999, twenty-two (or eighty-eight percent) included some involvement of NGOs and civil society.\textsuperscript{48} This represents a remarkable increase over fiscal year 1998 when only 20 percent of the CASs demonstrated an effort to reach poor and marginalized stakeholders. Moreover, ten of the twenty two CASs prepared in fiscal year 1999 provided details in the CAS report about the participation of NGOs or civil society and included, for example, annexes listing consultation participants, descriptions of the discussions, and findings resulting from the discussions. As to the CDFs prepared in the twelve pilot countries, NGOs and civil society have been involved in various forms in the CDF dialogue.

In response to a Board discussion on the progress made in the implementation of the pilot CDFs, a "Questions & Answers" document on the CDF was posted on the Bank's CDF webpage. One of the major concerns

\textsuperscript{44} See, e.g., \textit{Jerzy Sztucki, International Organizations as Parties to Contentious Proceedings Before the International Court of Justice (ICJ) 141} (A.S. Müller et al eds., 1997) (noting that the ICJ is not a forum for claims brought by individuals and discussing the various proposals advanced during the past half of the century to change this situation).
\textsuperscript{47} \textit{Id.} at 21.
\textsuperscript{48} \textit{Id.} at 11.
addresses in the Q&A paper was the ongoing involvement of NGOs and civil society in the CDF process and in building effective partnerships. In May and June 1999 a world wide on-line consultation was held. Many NGOs from both developed and developing countries took part in the electronic discussion, which involved about 800 subscriptions from ninety-eight countries.49

The Bank is also actively contributing to many of the over fifty different global policy and research networks which combine NGOs with international institutions, especially international financial institutions (IFIs), and private business organizations or academic institutions and has received comments from hundreds of NGO in its policy drafting (including the conversion exercise regarding old policies as well as the formulation of new policies). Such comments are also often received where the bank engages in institutional reform, e.g., as mentioned earlier, on the occasion of the establishment of the Inspection Panel itself and its two revisions. The informal dialogue with civil society on the occasion of the recent Spring and Fall 2000 meetings of the Board of Governors of the Bank and the Fund has increased as well.

The accountability mechanism of the Inspection Panel has been frequently used. The Panel opened for business in 1994. By October 15, 2000, it had received twenty-one requests for inspection. Three of these requests fell clearly outside the Panel’s mandate and were, therefore, not registered. Of the other eighteen requests, seventeen were either brought by local people allegedly adversely affected by Bank failures in connection with the Bank-financed projects and their local NGO representatives, or by local NGOs on behalf of affected peoples whose names and identities were often asked to be kept confidential and not to be disclosed for fear of potential reprisals. One request was submitted by an international NGO headquartered in the United States on behalf of people in a borrowing member country to whom local representation was not available.

From a qualitative point of view, the impact of civil society, and especially NGOs, is harder to measure.50 However, some concrete examples are showing that participation of and accountability to civil society can indeed have a great impact.

Participation of civil society can in particular change the project, adjustment strategy, or policy design. It can be a contributory factor for Bank activity. It can even be the major catalyst for a Bank activity in cases where such activity would not have been undertaken but for civil society engagement.

49. Id. at 15.

50. In conjunction with its project-lending, qualitative assessments of NGO and civil society impact is most advanced. Analysis of the Annual Reports on Portfolio Performance indicates that NGO involvement reduces the risk of poor project performance. See also, e.g., Carmen Malena, NGO Involvement in World Bank- Financed Social Funds: Lessons Learned (World Bank, Environment Department papers, 1997).
Thus, the Bank’s reviews of the Resolution Establishing the Inspection Panel, especially the second review, and the Bank’s strategy to assist its borrowing countries in eliminating corruption carry, to some extent, the works of NGO comments/involvement. Most likely, the Bank would not at all have adopted guidelines to help countries reduce harmful child labor, or would have only done so later.

A. The Establishment of the Inspection Panel and the Two Reviews of the Bank’s Experience with It

The creation of the Inspection Panel was the result of both internal and external demands on the Bank to be more transparent and accountable in its operational work by providing the Bank’s Board with the results of an independent review of controversial Bank projects and, thereby, to improve quality control in project design, appraisal, and implementation.\(^5\)

Inside the Bank, the creation of an operations’ inspection function emanated from an internal review of the Bank’s work following the appointment of Lewis Preston as President of the Bank in September 1991. The report of the task force commissioned by him, which was submitted to the Board in November 1992 and which came later known as the Wapenhans Report after its chairman, found, when examining the quality of the Bank’s loan portfolio, that Bank staff was often concerned about getting as many projects approved as possible under the Bank’s lending program.\(^5\) In such an “approval culture,” less attention had, however, been given to the commitment of borrowers and their implementing agencies to the implementation of projects and to the supervision by the Bank of such project implementation. The task force recommended a change in the Bank’s policies and practices in order to improve performance of its portfolio management and an enhancement of the role of the Bank’s Operations Evaluation Department (OED) which carries out \textit{ex post} evaluations of projects after project completion. A subsequent action plan, prepared by the Bank’s Management in July 1993, in response to the task force’s recommendations, introduced new business practices and processes.\(^5\) It recommended greater participation in the design and implementation of bank-financed projects by the people affected by these projects and greater

\(^{51}\) For a detailed account on the developments which led to the establishment of the Inspection Panel, see SHIHATA, \textit{supra} note 37, at 1-34; \textit{3 THE WORLD BANK IN A CHANGING WORLD} ch. XVII (The World Bank Inspection Panel- Its Historical, Legal and Operational Aspects).


involvement of relevant NGOs in project design and implementation. It also highlighted the need for the Bank's access, when necessary, to a reliable source of independent judgment about specific operations that may be facing severe implementation problems, such as an independent Inspection Panel.\textsuperscript{54}

External criticism of the Bank by NGOs and influential circles in certain member countries with large subscriptions/contributions to the Bank's affiliate, the International Development Association (IDA), no doubt influenced that conclusion. The essence of the external criticism was that international organizations including the Bank were not adequately accountable for their activities and that they needed to be more open and responsive. The criticism escalated in 1993 in the course of final negotiations by donor countries on the tenth Replenishment of IDA and the call for the establishment of an independent inspection function by the Bank was linked by the US to its willingness to contribute to IDA.\textsuperscript{55}

Another major external pressure pushing the Bank to think about the establishment of a special mechanism improving its accountability came from the mistakes made by the Bank regarding a project in India, \textit{i.e.}, the Narmada dam and canal project which was financed by the Bank to ten percent.\textsuperscript{56} Under construction since 1987, the project was in particular criticized for not responding to major environmental concerns and having greatly underestimated the number of people that needed to be resettled from the submersion area of the dam. The Bank, under Barber Conable, then President, commissioned an independent review of the project and the commission's chairman, noted a failure by the Bank to incorporate Bank policies in the project credit and loan agreements and a subsequent failure to require adherence to enforceable provisions of these agreements.\textsuperscript{57} While Management disputed some of the Morse Commission's findings, it agreed with the thrust of them after carrying out a further review.\textsuperscript{58}

\begin{footnotesize}
\begin{enumerate}
\item[54.] \textit{Id.} ¶ 60.
\item[56.] See Loan Agreement No. 2497-IN (1985) and Development Credit Agreement No. 1553-IN (1986).
\end{enumerate}
\end{footnotesize}
The above mentioned circumstances led several Executive Directors in February 1993 to come forward with a proposal for the establishment of an in-house inspection capacity for ongoing projects. Outsiders' proposals included the appointment by the Board of a Bank ombudsman and another for an independent commission with judicial powers, including the power to issue binding decisions on the Bank. Because of the political support of these external proposals in particular in the US House of Representatives in the course of IDA tenth Replenishment, Bank Management moved toward the development of a plan for the establishment of a standing inspection function. After the discussion of various Draft Resolutions prepared by the Legal Department, a final text was adopted by the Board of Executive Directors on September 22, 1993.

The first review of the Inspection Panel was required by the Resolution establishing it. This review took place in 1996. Along the process of the review within the Bank, especially discussion of the issue in the Board’s Committee on Development Effectiveness (CODE), suggestions from several NGOs and academics were received by management and circulated to the Committee which discussed these outsiders’ suggestions together with Management’s and the Panel’s suggestions. The first review resulted in the issuance by the Board of Clarifications of Certain Aspects of the Resolution establishing the Panel. As to the substance of the 1996 clarifications, including, inter alia, issues of the Panel’s functions such as the two-stage procedure (with the addition of a “preliminary assessment in the first stage), issues of access and eligibility, outreach, composition of the Panel, and disclosure of documents in the Panel process outsiders’ views have to some extent had a direct and/or indirect impact on the Board’s formulation of the 1996 Clarifications in a number of aspects.

59. See Shihata, supra note 14, at 22-23.
61. Inspection Panel, supra note 28, ¶ 27.
62. For a summary of the discussion on the occasion of the first review of the Resolution Establishing the Panel and the results thereof, see Shihata, supra note 14, at ch. 4; see also Louis Forget, Le "panel d’inspection" de la Banque Mondiale, Annuaire Francais de Droit International 645 (1996).
In connection with the Panel's function and procedures, the Board agreed to the flexible extension of the Panel's time frame for ascertaining the eligibility of a request as an exception to the general rule while not agreeing with the suggestion made by some NGOs to eliminate the first phase of the Panel process altogether and have the Panel alone decide on the eligibility of a request. The Board clarified further that the Panel's investigations should continue to result in "findings," not in recommendations to the Board on remedial measures alleviating the project's flaws, or on overall improvements of the Bank's policies and procedures, as suggested by some NGOs.

In terms of access to the Panel and eligibility of requests for inspection, Management had not objected to the suggestion of several NGOs to extending access to the Panel to all affected parties, including a single individual. The Board, however, declined to follow that suggestion. It also did not agree to another NGO-supported suggestion which favored the extension of the inspection function to requests submitted by foreign NGOs, local NGOs whose right or interests were not affected by the project, or even to complaints submitted in the general public interest.

On the question of disclosure of information, the Board agreed to make Management's response to the request for inspection as well as the opinions of the General Counsel of the Bank on matters related to the Panel available to the public after Board discussion of these documents, as requested by some NGOs. In the case of the General Counsel's opinion, the Board, however, reserved its right to decide otherwise in a specific case. Regarding another dimension of outreach, the Board decided that Management would make significant efforts to make the Inspection Panel better known in borrowing countries, as asked for, among others, by several NGOs. The Board clarified, however, that the Bank would not provide technical assistance or funding to potential requesters.

The Board reiterated the requirement of the Resolution that "[t]he Panel shall seek the advice of the Bank's Legal Department on matters related to the Bank's rights and obligations with respect to the request under consideration."
The request of some NGOs that the Board should have to separate legal counsel to advise on Panel matters distinct from the Bank’s General Counsel was rejected.73 It was recalled that the General Counsel provided independent legal advice to both the President and the Board on all matters.74

Controversies in connection with some requests over the decision on whether to authorize investigations in these cases led the Bank’s Board in September 1997 to initiate a second review of the Panel. This review resulted in April 1999 in the issuance of another set of clarifications of the Resolution establishing the Panel, the so-called 1999 Conclusions of the second review of the Panel’s experience.75

Unlike in the case of the first review of the Resolution of the Inspection Panel, the second review was in its major part concluded by an ad hoc Working Group formed following two informal Board meetings on Management proposals and Panel comments by Board decision and composed of six Executive Directors (representing both non-borrowing and three borrowing member countries).76 The Working Group’s deliberation took place without representation from Management and the other Board members not chosen to be Working Group members. The Working Group only heard the General Counsel and the Inspection Panel before asking the corporate secretariat to circulate its final proposal to all Board members and schedule it for discussion in the Board. After the Working Group’s proposal for a second set of clarifications of the Resolution had been put on the agenda of the Board of Executive Directors’ meetings, the fact that a paper by the Working Group was scheduled to be discussed by the Board and the text of the paper itself leaked to the outside. As a result, several NGOs and academics criticized the Working Group’s proposal openly in the media and/or wrote to the Bank and requested an open discussion of the Working Group’s proposal with civil society before the Board would take a decision on the proposal. In a move unprecedented in the Bank’s history, the Board invited NGOs and academics to send written comments on the proposal as well as to attend an entire day session of

73. Id. It may be noted that historically, these are examples where the views of Management as expressed in its response have differed from the views of the General Counsel as found in his opinion.


76. For a comprehensive record of the events surrounding the second review of the Inspection Panel, see SHIHATA, supra note 14, at 173-203. See also Daniel D. Bradlow, Precedent Setting NGO Campaign Saves the World Bank Inspection Panel, 6 HUM. RTS. BRIEF OF THE WASH. L. AM. U. 7 (1999).
discussion with Board members at Bank headquarters. This consultation with civil society had its impact on several aspects of the text of the later-on adopted 1999 Conclusions of the second review of the Inspection Panel. While not changing the essence of the Working Group's original proposal for conclusions, some of the nuances later adopted in the final version of the 1999 Conclusions stem from civil society's suggestions made before Board decision on the matter.77

The solutions to the following three issues were at the heart of the 1999 Conclusions. The 1999 Conclusions ended the unbalanced focus on assessing harm suffered or to be suffered by the requesters in the first stage of the Panel process and made it clear that the first stage is about the formal eligibility of a request which lies in an assertion of both (i) non-compliance by the Bank with its policies and procedures, and (ii) resulting potential or material harmed suffered or to be suffered by the requesters caused by Bank's failures. The 1999 Conclusions brought an end to the wrong impressions that remedial action, as opposed to accountability in response to harm, was at the heart of the process which had been nurtured by the Panel's practice to focus more on assessing the harm suffered by requesters than on ascertaining Bank failures to comply with policies and procedures.

The 1999 Conclusions also reversed the trend of the Management submitting borrowers' remedial action plans after the Panel issued its recommendation on whether to investigate but before the Board met to decide on that recommendation, a practice that frequently frustrated the Board's authorization of investigations. Submission of borrowers' remedial action plans by Management at this point in time, i.e., not in conjunction with either Management's response to the request or Management's response to the Panel's investigation report, are now explicitly prohibited. Management compliance plans may also only be submitted together with either Management's response to the request or its response to the Panel's findings. The Panel's role with respect to borrowers' remedial action plans will be limited to giving a view regarding appropriate consultations with selected people and local NGOs as such plans do not fall under the Panel's jurisdiction.

Finally, the 1999 Conclusions require a distinction to be made in Management's responses and Panel recommendations/reports between (i) failures exclusively attributable to the Bank; (ii) those exclusively attributable to the borrower (or other external factors); and (iii) those that are attributable to both the Bank and the borrowers (or other external factors). The earlier absence of a distinction between the different authors of failures that contributed to harm

suffered by requesters had created the impression that the Panel would, in addition to Bank failures, be investigating borrower failures. That wrong impression should no longer be possible with the new requirement to distinguish between different categories of failures as well as to design action plans including proposals for corrective measures corresponding to the different categories of failures.

The most prominent comments by civil society included the following arguments/requests. Instead of the Board Working Group's original suggestion on that the Board "will authorize an investigation without making a judgment on the merits of the claimant's request and without discussion, except with respect to the technical eligibility criteria," civil society representatives requested that the preliminary review process requiring Board authorization of investigations be dropped altogether, or Board approach of investigations be deemed to be given upon submission of the Panel's recommendation unless otherwise decided by a two-thirds vote of the Board. While the latter suggestions were ultimately not adopted, the technical eligibility criteria were, however, clearly enumerated in a inserted by the Working Group in its proposal after meeting with NGOs and accepted by the Board in the final discussion on the set of objective factors, with the expectation that, as a result of the criteria being spelled out, the Board would indeed trust the Panel's recommendation and allow it to go forward with an investigation without prior discussion on the latter's justification in the Board.

Civil Society further requested that any remedial action plans (those agreed upon with the borrower and those concerning Bank action only) would only be adopted after the Panel process would have been completed, i.e., the Panel would have submitted the findings of its investigation. Neither the Working Group after meeting with NGOs nor the Board in its final discussion did follow this request, but it was emphasized that what seemed to have pre-empted the Panel by previous practice from going forward with investigation had been taken care of in the Working Group report. Management, while free to adopt a plan including corrective measures concerning Bank failures before the Panel would investigate, would at the first stage of the Panel process only communicate such plans on corrective measures to the Panel, together with its response to the request, not to the Board, so that the panel would be given an opportunity to judge the appropriateness of the proposed Management action to address Bank failures. (Of course, Management would be in a position to take corrective measures after the Panel would have investigated and then the measures would be reported to both the Panel and the Board as the Panel's investigation would no longer be impeded by Management action.) Management would also be free to agree on remedial action plans with the borrower. These plans could address borrower's failures; they would fall outside the Panel's jurisdiction (which deals with Bank, not borrower failures).
In order, however, not to subvert the Panel process through the negotiation of such plans either, these plans would also be communicated to the Panel which would have the opportunity to comment on the part on consultation with affected people and local NGOs in the plan. And would normally be considered by the Board only after the Panel would have undertaken its investigation. The Board’s final decision on this issue achieved two purposes: (i) the Panel’s original jurisdiction was confirmed, i.e., its focus on Bank failures; and (ii) the Panel’s function was nevertheless not diminished as it would be the Panel in the first place to be informed of any remedial plan with the Board normally becoming involved in Management corrective plans and borrower agreed upon plans only after the Panel had the opportunity to comment on the measures (albeit in a limited way only for borrower agreed upon plans).

Another proposal by civil society concerned the standard to measure material harm suffered by people as a result of the Bank’s non-compliance with its policies and procedures. Outsiders criticized the Working Group’s standard to measure such harm on the basis of the without-project situation since the latter would only reflect a “do-no-harm” approach while not pursuing a higher standard of importing living conditions, a standard that should be more in line with the Bank’s genuine mission of poverty reduction. This suggestion was not accepted either by the Washington Group or by the Board in its final decision on the Working Group report. The standard of the without-project situation was kept because it allowed for a more objective assessment of harm and avoided evaluations in the abstract, effectively excluding unfulfilled and difficult to measure expectations from the assessment. It was, however, added that it was important to gather whatever baseline information might be available.

Another suggestion by civil society related to an unimpeded Panel access to project sites on the basis of Bank loan agreements. Again, this suggestion was not accepted but the final Board agreed upon text of the conclusions of the second review of the Inspection Panel equally relies on a presumption of unimpeded Panel access to the project site. This text leaves it up to the Panel to decide whether it would need to visit the country in order to establish the eligibility of the request. Furthermore, the final text of the conclusion states explicitly that the borrower’s consent for field visits envisaged under the Resolution establishing the Panel is assumed.

Upon criticism from civil society as to the recommendation that the Panel maintain a low profile during the investigation in keeping with its role as fact-finding body and, so as to not create the impression that it might be investigating borrower’s failures, it should decline media contacts during the investigation, the language on the Panel’s conduct was changed. The report as newly formulated by the Working Group after the meeting with NGOs and as ultimately adopted by the Board emphasized the need to conduct the investigation in an independent and low-profile manner. It further called on
both Management and the Panel to limit their comments to the media to the process, not the substance, of the inspection. Such comments would only be made under those circumstances in which, in the judgment of the Panel or Management, it is necessary to respond to the media (the final Board adopted a version which slightly deviated from the Working Group version).

As a result of the meeting with NGOs, the revised Working Group report added a new paragraph on "outreach," calling on Management to make significant efforts to make the Panel better known in developing countries. Similarly, as a result of the discussion with NGOs, the revised report stressed the importance of prompt disclosure of information to claimants and the public and, for the first time, recommended that information provided to claimants should be translated into their own language, to the extent possible (final Board approved version).

B. The Bank's Anti-Corruption Strategy

The Bank's explicit concern with corruption as a general development issue developed from both internal efforts and pushes from civil society outside. The Banks had long been concerned with governance issues but corruption, which may be identified as part and parcel of governance, in the Bank primarily defined as a country's efficient and orderly management of its economic and social resources, had been a taboo.

When James D. Wolfensohn assumed the Bank's Presidency in mid-1995, he soon asked the Bank's General Counsel to review all proposals and consider initiatives for possible actions by the Banks to address the issue of corruption. Detailed discussion of such proposals and initiatives at the senior management level led to specific actions that were then approved by the President, and, as needed, by the Board of Executive Directors. In particular, a comprehensive strategy to address corruption, both as an issue of the Bank's own effectiveness and more generally as a development policy issue, was approved by the Bank's Board on September 2, 1997. At all stages of the various steps the Bank undertook to address corruption more explicitly, its internal discussion was accompanied by receipt of comments and suggestions for a Bank strategy from many NGOs (including Transparency International) and other parts of civil society. A dialogue with the latter took place in particular along the work of the Corruption Action Plan Working Group (CAPWG).

Even before October 1, 1996, the Bank's President, James D. Wolfensohn, had referred to corruption as the "cancer" of development in his speech before the Annual Meetings of the Board of Governors, in the summer of 1996, an

79. For a detailed chronology and on a listing of the Bank's approach to corruption, see id. at 18.
internal Bank Group task force, the CAPWG, was set up. It was charged with working out a systematic framework for addressing corruption as a development issue in the assistance the Bank provides to countries and in the Bank's operational work more generally. The report came out in June 1997 after lengthy discussions in the Bank's Policy Committee and was discussed in a Board seminar in July 1997, then approved (as revised) by the Board in September 1997. It provided a framework for addressing the issue by pulling together existing bank approaches, suggesting new ones, and outlining a plan for action.\(^{80}\) The framework was meant to guide the Bank in addressing the issue of corruption at four levels:

1) Protecting Bank-financed projects from fraud and corruption;
2) Helping borrowing countries address corruption by responding to specific country request for assistance in areas of Bank expertise (including policy reform and institutional strengthening);
3) Considering corruption more explicitly in the policy dialogue with borrowing countries, country assistance strategies, the allocation of the lending program, the design of projects, economic and sector work, and research; and
4) Lending the Bank's voice, knowledge and full support to international efforts against corruption.

At the first level, the Bank had revised its Procurement Guidelines in July 1996 even before the report was written. Further changes were made around the same time at which the CAPWG report came out.

At the second and third levels, the Bank has helped and keeps helping countries reform economic policies and strengthen public institutions. It is now also involved in explicit anti-corruption strategies, and raising the issue of corruption explicitly in the dialogue with its borrowing members.

Advice on economic policy reform is the main pillar of the Bank's anti-corruption work with borrowers. Enlarging the scope and improving the functioning of markets strengthens competitive forces in the economy and curtails opportunities for monopoly profits, thereby eliminating the bribes public-officials may be offered or may extort to secure them. Markets, in view of the report of the CAPWG, discipline participants more effectively than public sector accountability mechanisms generally can.

Further Bank advice considers institutional capacity building. Without sufficient institutional capacity, well-intended policies can result in poor outcomes and even more corruption. Infrastructure privatization, environmental regulation, decentralization of government activity, tax reform, and public expenditure reduction are examples of policy areas where institutional capacity must be carefully factored into policy design. Building strong institutions is not only a key to good governance and therefore to development, but also to the control of corruption.

At the fourth level, the Bank strongly supports international efforts including the OAS, the OECD, the European Union and the Council of Europe. These efforts are an important complement to its country-based work, and should become increasingly active as an observer, advisor, and/or participant.

C. The Bank’s Child Labor Reduction Strategy

Until the mid-1990s, the Bank had not addressed the issue of child labor as either a very prominent or a free-standing concern in its operations. With the international community’s growing awareness of the issue and recognition of it as much pressing, the Bank’s attitude changed. The latter change can be traced back to not exclusively but especially several NGOs writing to the Bank’s President.

Before this NGO pressure, the Bank had addressed the issue of child labor under some other titles, e.g., in the policy papers on women in development and labor migration. The 1995 World Development Report (WDR), a major World Bank research and vision publication, was also devoted to labor issues. One of the WDRS findings concerned child labor and stated:

National legislation and international conventions banning child labor have symbolic value as an expression of society’s desire to eradicate this practice. But they cannot deliver results unless accompanied by measures to shift the balance of incentives away from child labor and toward education. The most important ways in which governments can shift this balance are by providing a safety net to protect the poor, expanding opportunities for quality education, and gradually increasing institutional capacity to enforce legislated bans.

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The Bank had further studied the question of child labor.\textsuperscript{82} Despite the absence of an operational policy on child labor, the Bank contributed to child labor reduction through its financing of projects for education, health, nutrition, population and social safety nets. The Bank had also long recognized its linkage to poverty and to the poor quality or availability of education.

In the mid-1990s, when child labor moved further to the center of the international debate on the positive and negative effects of globalization and several NGOs skillfully made the case to address child labor issues in a more focused way in letters to the Bank’s President, Bank Management, in the first place the Bank’s General Counsel, felt that the time was ripe for the Bank to develop a more explicit position on the issue of child labor.

As a result of a growing awareness of the issue of child labor in the mid-1990s and based on the conviction that exploitative child labor has a negative impact on the economic and social development of countries, the Bank’s Management prepared in 1996/1997 a position paper on child labor (the World Bank’s Child Labor Paper). This paper was submitted to the Bank’s Board of Executive Directors for their consideration in May 1997. In their discussion of this paper in July 1997, the Executive Directors agreed with the new approach by the Bank to child labor issues, as proposed by Management. They also agreed to the publication of the position paper with some revisions.\textsuperscript{83} According to the position paper, the Bank’s new approach to child labor issues includes: (a) giving more focus to child labor issues in the policy dialogue with borrowing countries; (b) improving partnership on these issues with other relevant international organizations and NGOs; (c) raising the awareness and sensitivity of Bank staff regarding the issues involved; (d) giving more emphasis to child labor issues in existing lending activities; (e) requiring compliance with applicable child labor laws and regulations in specific projects where exploitative child labor is otherwise likely to occur; and (f) designing specific projects or components of projects to target the most harmful forms of child labor, possibly starting with pilot projects in countries where child labor is seen as a serious problem.

Following the Board of Executive Directors’ approval of the Child Labor Paper, Bank Management immediately began to engage in the above mentioned efforts and has, since then concentrated on mainstreaming child labor into its work. For example, the Bank’s credit agreement for the Silk Development Project in Bangladesh, which was approved in late 1977, comprises covenants

\begin{footnotesize}
\footnote{83. See P. Fallon & Z. Tzannatos, \textit{Child Labor Issues and Directions for the World Bank} (1998).}
\end{footnotesize}
requiring Bangladesh to make sure that contractors, hired by the Silk Foundation (the agency responsible for the implementation of the project in Bangladesh) undertake to abide by the applicable laws of Bangladesh, including child labor laws, in their carrying out of the project. Similar provisions are considered in other projects. An increasing number of further child labor related projects are currently being undertaken by the World Bank.

Reducing child labor is a difficult task, involving a broad range of general and more specific measures, from poverty alleviation to programs which encourage greater school attendance. In order to incorporate the concern to address child labor into the Bank’s work, the Bank established a Child Labor Program in May 1998. The Child Labor Program promotes a range of practical initiatives to combat child labor and builds up knowledge on the topic. The Program is housed in the Human Development Network and is the focal point for Bank-wide child labor activities, projects and policy. The Program supports various child labor and child labor related projects, including research, and analyses, pilot studies, child labor reduction evaluations, and internal and external dissemination through training, seminars and via the child labor website. Policy implications derived from these projects feed into Bank dialogue with clients and donors, Bank country assistance strategies and lending activities.

Among major international organizations, the Bank was the first to focus specifically on harmful or exploitative child labor when it began to discuss child labor as a policy issue at the Senior Management level in Summer 1996, a debate that resulted in new directions agreed upon with the Board of Executive Directors in July 1997. With its focus on harmful child labor, the Bank provided an impetus to further efforts by others with whom the Bank has by now developed an extensive cooperation on the issue.

The World Bank’s pragmatic focus on harmful or exploitative child labor inspired and reinforced the debate in International Labor Organization (ILO) on the adoption of a new convention similarly focusing on the worst forms of child labor. Cross-fertilization between the Bank and ILO in the approach to child labor continues beyond the adoption by ILO of the new Convention on worst forms of child labor in June 1999. The Bank welcomes the new ILO Convention’s more substantive approach (versus its earlier, primarily formal definitional approach to child labor based on strict age standards in the Minimum Age Convention). The new ILO view on child labor corresponds its own, from a general perspective, and is susceptible, in the more comprehensive details of defining the worst forms of child labor, to even guide Bank actions to combat child labor where the Bank’s own position paper fails to give guidance.

The greater parallels in ILO’s and the Bank’s approach from a general policy perspective have increased the opportunities for both institutions to work closer together as partners on the ground. As a result, ILO with its IPEC program\(^{85}\) and the Bank are working together towards a gradual elimination of child labor by strengthening the capability of countries to deal with the problem.

Further partners of the Bank include UNICEF, the International Organization of Employers (IOE), and the International Confederation of Free Trade Unions (ICFTU).

V. CONCLUDING REMARKS

The scope of impact which civil society has on the Bank in legal terms is reflected in the concrete meaning the Bank has given to two concepts: participation and accountability. The later translate into “meaningful consultation” with project beneficiaries and “accountability of Bank Management to the Board triggered by affected people’s standing before the Panel” rather than “participation in the Bank’s decision-making process” and “legal remedies against Bank financing of projects.” This does not mean that the Bank has once and for all rejected broader concepts as those brought forward by development scholars. It means that the Bank has been the first international finance and development institution to courageously introduce new processes and mechanisms while ensuring a legally sound basis for them as well as keeping an eye on the practical feasibility of dramatic changes. The bank remains open to further develop these new processes and mechanisms and thereby contribute to the shaping of the features of emerging concepts of international development law.

There are a number of things that have to be kept in mind for the continued use of already existing participation and accountability structures as well as in the further evolution of these structures in the future.

Involvement of civil society in the Bank’s activities has in terms of participation and in accountability terms always taken place on a legally sound basis. It developed from \textit{ad hoc} incidents to more institutionalized ways (either in the format of established and repeated practices or by incorporation in written procedures).

From a geographical point of view, the focus by the Bank was initially on local civil society reflecting the traditional project-lending mode of the Bank. By now, it has broadened to international civil society, especially in adjustment strategy, and in policy matters.

\(^{85}\) With its International Programme on the Elimination of Child Labor (IPEC), ILO is assisting countries in elaborating and implementing comprehensive policies and targeted programs and projects starting in 1992, with financial support from several governments.
In substance, involvement took the form of consultation or assistance in oversight through alerting the Bank where its projects were badly managed. It never meant attribution of powers in the decision-making, as such an attribution would have been inconsistent with the Bank’s Articles of Agreement and the allocation of powers to Management and the Board of Executive Directors under the Articles. Any future developments should keep this limitation in mind.

From a practical point of view, involvement of civil society in the way it has so far been structured has not led to disruptions in the functioning of the Bank and in doing its business. Inappropriate manipulations only occurred when civil society made itself heard outside the established ad hoc and/or institutionalized frameworks, i.e., contrary to the existing established rules of the game or ad hoc agreed-upon new practices by those vested with the powers to set the rules of the game. For example, undue influences were exerted on the Bank when, contrary to the Bank’s rules of the game, demonstrations in front of the Bank took place and comments originating with civil society were published in the media at the time the Bank’s Board of Executive Directors were deliberating and discussing the investigation report of the Inspection Panel in the Western China Poverty Reduction/Tibet case before the Board had taken a decision because the reports by both Management and the Inspection Panel had been leaked to the outside.86 In the latter incident, the Board followed the traditional model of decision-making process in the Bank and, unlike in the case of the second review of the Inspection Panel where it had itself organized a meeting with NGOs before making a final decision, did not want to officially hear outsiders’ views before taking a decision. For an orderly development of consulting with outsiders, agreed upon procedures, i.e., the “rule of law,” should be followed. Furthermore, respect must be paid to limitations that cannot be overcome by agreed upon procedures but would require a change in the big framework through an amendment of the Bank’s Articles of Agreement.

Beyond the rules of the game under the Bank’s current framework, i.e., in terms of future developments, or from a policy perspective, two issues are most important. First, if one would like to accord civil society a greater role in the development activities of the Bank and other development agencies, in particular accord to them some decision-making powers, the legitimacy of such a move must be scrutinized. Are international NGOs, for example, really the representative of local population in a developing country, i.e., the ultimate beneficiaries of development assistance? Or are they not merely self-appointed spokesmen, frequently without elaborate internal governance structures and without their heads being internally “democratically” elected, with the

exceptions of labor unions? As Paul C. Szasz, a fellow member of the ILA Committee on Accountability of International Organizations has written, "[a]ny discussion of the role of NGOs in relation to [international organizations] must start from an understanding of what those organizations are" i.e., inter alia, who their members and representatives are and who supports them, before giving them roles in the working of international organizations. The Bank has started, in addition to involving NGOs, to analyze them but much more analysis would be needed to be informed for further increasing NGOs' roles in Bank activities. It is understandable that Executive Directors from democratic member countries express great frustration over NGOs' participating in the demonstration on the occasion of the joint Bank/Fund Board of Governors' meetings as NGOs deserve less attention than Executive Directors or Governors who, when coming from democratic countries, bring much more legitimacy with them.

The second issue is of conceptual nature. Frequently, outsiders have called for greater "democratization" of international organizations generally, and international financial organizations in particular. Democratization, however, is not only the wrong term but should never conceptually be asked for because, unlike states, international organizations are not organisms that could within themselves establish a self-standing democratic structure. They do neither possess a territory nor a population to be looked after fairly, but have a much narrower purpose to fulfill. The only exception here would potentially be the European Union. Thus, any call for direct involvement of the people in the political decision-making process or their representation for that process as well as separation of powers, e.g., direct participation by people in Bank decisions or representation by them in the Board as well as establishment of an independent court judging in cases between Bank Management and affected people, or participation of NGOs in decision-making by the Bank's Board as


88. See the work on putting together a Handbook on Good Practices for Laws relating to NGOs, analytical work which was sponsored and begun by the World Bank in the mid-1990s but has been abandoned in the meantime. A definition of NGOs for bank purposes, however, has been formulated. See Good Practice (GP) 14.70 Involving NGOs in Bank-supported Activities (1998) (noting that, in general, the interest of the Bank is restricted to those NGOs that work in the field of economic and social development, emergency relief, and environmental protection or that comprise or represent poor or vulnerable people). For further analytical work and classification of NGOs as relevant for the Bank's operational work, see Carmen Malena, Working with NGOs A Practical Guide to Operational Collaboration between the World Bank and NGOs (World Bank Publication, Operational Policy Department March 1995).

89. Even in the case of the European Union (EU), great care in the use of the term "democracy" and application of that term to the EU has to be exercised. For a discussion of the issue of democracy and the EU, see Sabine Schlemmer-Schulte, The "Democratic Deficit" in the European Union Revisited, EUROPEAN REVIEW OF PUBLIC LAW (2000) (forthcoming).
part of involvement of people in the legislating process of the Bank have their conceptual shortcomings. These shortcomings should be kept in mind while, of course, smaller goals for change to enhance the organizations' efficiency such as further transparency and additional checks and balances can and should certainly be pursued.