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**Democratizing global governance  
through the use of a joint legal/market  
accountability system:  
The bet of the World Bank and  
Corporate Social Responsibility**

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**Comment citer cette étude ?**

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## Abstract

The idea of this Master's thesis was born from the observation that what is referred to as globalisation is deeply affecting the world we live in. Indeed, more and more transnational institutions are entrusted with (regulatory) powers that had always been thought of as solely belonging to States. However, they are far from being democratic. This thesis will focus on one of those institutions: the World Bank; with the aim of making it more accountable. Indeed, in accordance with the Global Administrative Law project, I argue that, as far as today, accountability is the form of democratic responsibility which is best adapted to the global paradigm. After having described how the World Bank interprets its mission of poverty alleviation, I shall proceed to an in-depth analysis of the concept of accountability. On that basis I will analyse the accountability mechanisms existing at the Bank, and conclude that they do not conform to the concept. Therefore, I will argue for a new accountability mechanism: *a joint legal/market accountability system, through the use of Corporate Social Responsibility instruments*, which will build upon the World Bank's mission. To that end, I will demonstrate that the field of development can be framed as a market, and that the World Bank has a dual nature (Corporation and Public Institution). Finally, I will outline in what ways the proposed solution can work.

*Notre héritage n'est précédé d'aucun testament.*

René Char,  
*Les Feuillettes d'hypnos*

*Over-seriousness is a warning sign for mediocrity and bureaucratic thinking. People who are seriously committed to mastery and high performance are secure enough to lighten up.*

Michael J. Gelb

*Pourquoi, toujours pourquoi! Vous cherchez trop à comprendre, c'est un grave défaut.*

Jean Cocteau,  
*Le testament d'Orphée*

I would like to thank my supervisor Jan Klabbers, who, in spite of his very busy agenda, was always there to listen to me, and to give me very insightful advices.

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Finally, I would like to thank my parents for their constant dedication throughout all those years; to thank them for showing me the path to human generosity through the disinterested love they have always given me.



## Introduction

Since they were created in 1944, the Bretton Woods institutions have always been controversial: left-wing groups denounce them as tools of US imperialism and as enforcing global capitalism, whilst right wing groups accuse them of supporting corrupted and undemocratic governments that oppress their people.<sup>1</sup>

What is true is that being at the core of the International Financial system and with a membership close to 200 States, those two twin institutions can be considered as important global players who have a huge influence on the lives of many people from a wide variety of countries.

Since their creations, they have provided financial support to third world and developing countries, as well as to former Soviet Union States.

In providing this support, they have had a tremendous influence upon the politics of those different countries.

Be it in the 1980s when the structural adjustment loans and their horrendous social consequences and gathered criticism around the two institutions (even from UN agencies such as UNICEF and the UNDP),<sup>2</sup> or more recently with the conditionality-based lending which has allowed the World Bank to interfere in such areas as the reform of the judicial system or the reform of the education,<sup>3</sup> the importance of these two institutions for the economic, social and political development of many countries is huge, and so is their influence and power.

The extent of this influence is even greater when one thinks, for example, about the outcome of some of the projects which have been financed by the World Bank.

For example, many projects fail to reach their goals.<sup>4</sup> That was the case for the Chad Pipeline, which was supposed to bring oil money to Chadian people. What happened

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<sup>1</sup> Woods, 2006, p. 1.

<sup>2</sup> Klein, 1999, pp. 97-114.

<sup>3</sup> Bradlow, 1996, p. 57.

<sup>4</sup> See among many articles, Ebadi & Attaran, 16/06/2004; Amnesty International 1997, pp. 3-4; Rahul Jacob, 08/01/2005. In general, over shortcomings concerning governance, transparency, or empowerment of the poor, see, UNDP, 2005, pp. 98-110.

instead, was that most of the funds supposedly devoted to the poor were diverted by the Chadian government and oil companies, and used in military expenses or in public buildings and palaces which have little to do with the public good and with combating poverty. On the other hand, 80 percent of the eight million people continue to live on less than a dollar a day... The project will have increased the wealth of only 5% of the population.<sup>5</sup> Déjà vu?

Other projects not only fail to deliver their promises but also result with human rights violations. This was the case with Chixoy Dam in Guatemala. The building of this dam resulted with the resettlement of the populations who were living on the site. As a consequence of the resettlement, villagers were left with only a third of the land they cultivated before being displaced. They lost, amongst other things, trees, livestock, crops, fishing rights, and cultural artefacts.

In addition to that, the construction of the dam fuelled massacres which killed thousands of people and effected villagers. Sacred temples have also been destroyed and maculated.<sup>6</sup>

The same holds true for the Namara Dam in India.<sup>7</sup>

The feeling one gets when reading those lines is one of injustice: “how come that institutions which are so powerful and change the life of so many people do not account for their acts?”

This is the rationale underpinning this thesis. It will **focus on the World Bank**,<sup>8</sup> as a global player embedded within globalisation and global governance. It acknowledges that globalisation has seen the emergence of new players which are entrusted with roles of a growing importance, but which are fundamentally unaccountable. It will therefore try to find a way to make the World Bank more accountable.

The first chapter will be a brief introduction of the World Bank and of the evolution of

<sup>5</sup> Goetz & Jenkins, 2002, p. 3; New York Times, 2001.

<sup>6</sup> The advocacy project, 2000.

<sup>7</sup> Cf. *Infra*, the Inspection Panel.

<sup>8</sup> The World Bank Group is comprised of five separate but related institutions: the International Bank for Reconstruction and Development (IBRD), the International Development Association (IDA), the International Finance Cooperation (IFC), Multilateral Investment Guarantee Agency (MIGA) and the International Centre for Settlement of Investment Disputes (ICSID) (see World Bank, 2003a, pp. 10). This thesis refers to the first two, IBRD and IDA, both of which support public sector projects.

its work.

The second chapter will ask the question as to why the World Bank should be accountable.

In the Third chapter I will analyse the concept of accountability and assess the accountability mechanisms currently in place at the World Bank. I will draw the conclusions as to why they don't work, and as a consequence will argue for a new accountability mechanism,. That is, a joint legal/market accountability, through the use of Corporate Social Responsibility mechanisms, which will build upon the Bank's mandate as it is interpreted by the institution. Chapter four will determine if the necessary conditions for this mechanism to work do well exist at World Bank level (namely, the existence of a market populated by competing actors).

The fifth chapter will show in what ways this new accountability mechanism can deliver its promises. It will be followed by final conclusions.

# **Chapter I: The World Bank: an overview**

## **1.1 The beginnings of the institution**<sup>9</sup>

According to its article of agreement, the World Bank (hereinafter “the WB” or “the Bank”) is concerned with “*the reconstruction and development of territories of members.*”<sup>10</sup>

In other words, at the time of its creation, the Bank was intended to reconstruct the European countries which had been severely struck by World War II and to participate to the economic development of less developed countries, *inter alia*, through “*promot(ing) the long-range balanced growth of international trade and the maintenance of equilibrium in balances of payments (...) thereby assisting in raising productivity, the standard of living and conditions of labour in their territories.*”<sup>11</sup>

In the very words of its Articles of agreement, the Bank was an institution concerned with economy, be it reconstruction or development.

With the creation of the Marshall Plan, the reconstruction period of the Bank proved to be very short, and it has since then concentrated on the “development part of its mandate.”<sup>12</sup> The Bank has thus always been a development institution.

Although the Bank has always claimed to be a development institution, the scope of its activities has evolved throughout time.

In a first period, the institution was solely dealing with development understood as economic development focusing upon short-term macroeconomic stabilization and balance of payment pressures.<sup>13</sup>

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<sup>9</sup> There is a huge amount of literature available on the history of the institution. Among many works see, Web, Davis, Kapur 1997, Vol. 1 et 2; Mason and Asher, 1973, *Gilbert & Vines*, 2000, *Mac Darrow*, 2003, *Caufield*, 1996.

<sup>10</sup> Articles of Agreement, Art. I, s 1.

<sup>11</sup> Articles of Agreement, Art. I, s 3.

<sup>12</sup> Mason and Asher, 1973, p. 239.

<sup>13</sup> World Bank, 2003(b), p. xviii; Boisson de Chazournes, 2007, p. 218.

## **1.2 The turning point**

Nonetheless, as soon as the beginning of the 70's, and under the influence of its then president Mac Namara, the Bank began to change its priorities, focusing directly on poverty alleviation and basic human needs (The emphasis is therefore on development inasmuch as it can contribute to the reduction of poverty).<sup>14</sup>

Therefore, the World Bank's primary objective is poverty alleviation, and improving the quality of life.<sup>15</sup>

This coincided with the change in the development discourse, which, given the failure of the so-called "trickle-down" approach<sup>16</sup> (which focused solely on the growth of the Gross Domestic Product),<sup>17</sup> shifted the focus onto a more comprehensive and sustainable approach.

This new approach upholds that development is a comprehensive process incorporating economic, social, cultural, political, and spiritual dimension.<sup>18</sup> It relies *inter alia* upon the foundational work of Amartya Sen who sees development as "a process of expanding the real freedoms that people enjoy" in which both "substantive" freedoms like food, life and health and "instrumental" freedoms like free speech, transparency and protective security are equally important.<sup>19</sup>

Equally, the United Nations Development Program has articulated a vision of "sustainable human development" defined as "expanding the choices for all people in society" and including the principles of Empowerment, Co-operation, Equity, Sustainability and Security.<sup>20</sup>

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<sup>14</sup> De Vries, 1987, p. 13.

<sup>15</sup> World Bank, 2007(a), pp. 1-2.

<sup>16</sup> Skogly, 2001, p. 18.

<sup>17</sup> Ackerman, 2005, p. 3.

<sup>18</sup> United Nations General Assembly, 1986.

<sup>19</sup> See, Sen, 1999.

<sup>20</sup> Ackerman, 2005, p. 3.

### **1.3 Current work**

The Bank has systematized this shift of focus in the so-called Comprehensive Development Framework (CDF).<sup>21</sup>

The latter argues for an approach to development which puts the emphasis on the following points: Development strategies should be comprehensive, holistic and shaped by a long-term vision (instead of focusing on GDP growth); development performance should not be measured by the amount of money lent, but assessed by results on the ground; Development goals and strategies should be “owned” by the country, based on broad citizen participation in shaping them; and finally, recipient countries should lead aid management and coordination through stakeholder partnerships.<sup>22</sup> It also upholds local ownership of the programs and the creation of a stable and sound “business enabling environment” also known as “favourable investment climate”.<sup>23</sup>

This view is analogical to the one purported by the rights based approach to development.

This approach also relies upon the holistic, sustainable conception of development. Yet, its main characteristic is to link development to human rights, thereby transforming the former into a right (instead of a simple favour). In other words, every poor person has a right to development and consequently, aid and development providers are considered as duty bearers.<sup>24</sup>

Development also means controlling your own destiny.

If the World Bank has not officially endorsed this approach, because of its intrinsic link to human rights, it has nonetheless expressed clear support for it.<sup>25</sup>

As a result, the Bank is now funding activities related to health, education or housing, but also to environmental concerns and gender issues.<sup>26</sup> In addition to that it is also very concerned with

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<sup>21</sup> See, Wolfensohn & Fischer, 2000, p. 1.

<sup>22</sup> World Bank, 2003(b), p. 5.

<sup>23</sup> World Bank, 2007(a), p. 2.

<sup>24</sup> United Nations General Assembly, 1986; See also, Ackerman, 2005, p. 6.

<sup>25</sup> World Bank, 1998(a), p. 2.

<sup>26</sup> Bradlow, 1996, p. 56.

local ownership of projects and local participation into its operations.<sup>27</sup>

In addition to that, it has also officially endorsed the **Millennium Development Goals** which call for the elimination of poverty and for the achievement of sustainable development.<sup>28</sup>

As a result, the World Bank is also active in the fields of debt relief, HIV/Aids, water and sanitation, education and so on.<sup>29</sup>

As a conclusion, the Bank is now trying to alleviate poverty understood as something encompassing not only material deprivation (measured by an appropriate concept of income or consumption) but also low achievements in education and health. This understanding of the concept also includes vulnerability and exposure to risk (and thus, voicelessness and powerlessness).<sup>30</sup> That is why, the World Bank has put so much emphasis upon empowerment, participation, country-owned project, which are supposed to help raise the voice of the poor.<sup>31</sup> Indeed, in this new framework, the poor should have the capacity to exercise voice and political power in order to gain equitable access to resources and opportunities, and to be able to defend their rights and interests in the political process.<sup>32</sup> Therefore, empowering the poor to influence the decisions that will affect their lives is a critical dimension of their development.<sup>33</sup>

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<sup>27</sup> *Ibidem.*

<sup>28</sup> World Bank, 2007(a), p. 3.

<sup>29</sup> See, World Bank, 2007(a).

<sup>30</sup> World Bank, 2001, p. 15.

<sup>31</sup> Boisson de Chazournes, 2007, p. 220.

<sup>32</sup> Narayan, 1999, pp. 7 & 12.

<sup>33</sup> World Bank, 2002, p. vi; see also, McGee & Norton, 2000, p. 68.

## Chapter II: Why should the World Bank be accountable?

In this chapter I will examine the reasons as to why it is important to increase the accountability of the World Bank.

There are two main reasons as to why the World Bank should be accountable.

On the one hand, it is a public institution endowed with sovereign powers from its members States. It is thus a matter of legitimacy that it is accountable.

On the other hand, it is a development institution, and accountability is instrumental in improving its work.

### 2.1 Legitimacy

As I have claimed in the introduction, I consider the World Bank as being an institution of global governance.

In order to understand why the notion of global governance has emerged, it is useful to remember that we live in an always more interconnected world, where, be it in the fields of security, development aid, the environment or financial regulation, States cannot face challenges on their own anymore. Therefore, and in order to be able to face those challenges, various supra-nationals systems of regulation have been established; at first through international treaties (i.e. constitutive act of international organisations), but more recently, also through informal means going beyond formal treaty-based cooperation.

As a result, many regulatory decisions issued in order to tackle those world-wide issues are taken at the global level instead of the national level.<sup>34</sup>

That is why global governance refers to “*rule-making and power exercise at a global scale*”, by a wide variety of institutions.<sup>35</sup>

The fact is that these actors of global governance have huge powers -some of which had always been thought of being States' prerogatives, thereby

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<sup>34</sup> See *infra*, the characteristic of the development market, Chapter IV.

<sup>35</sup> Keohane, 2002, p. 3.

increasingly influencing people's life.

In addition to their increasing powers, these global regulators are subject to a very loose control. This certainly holds true for International Organisations, where democracy and representativeness should be ensured through the fact that they are governed by governments which in turn are representing their people. However, the link between the organization and the constituencies of the member States is very stretched to say the least.<sup>36</sup> This means that exerting effective democratic control over these institutions resembles less to reality than to a chimera.

This (huge power and little control) constitutes the claim for more legitimacy for those institutions.<sup>37</sup>

This is particularly true for the World Bank which has a huge influence over people's lives.<sup>38</sup>

When the Bank started its activities, accountability wasn't such an issue, because it was mainly funding technical projects.

However, during the 80's and 90's the institution's influence on its Borrowing members' internal has kept on increasing due to the creation of longer and longer lists of conditionality for loans. There have been therefore more and more calls for more legitimacy, as well as to a broadening of the stakeholders to whom the institution should be accountable.

Indeed, we have seen in the previous chapter that the Bank has endorsed a holistic approach to development, which also puts the emphasis on what is referred to as the "enabling business environment". This means that a sound political environment is critical in achieving effective development. For example, the stability of the financial sector or the efficiency of the judicial system are crucial if a development project is to succeed.<sup>39</sup>

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<sup>36</sup> See, Krisch, 2009, pp. 3 *et seq.* Who talks about the precarious legitimacy of global governance. In addition to that, International organisations have had a tendency to take more and more powers through the use of the theories of implied and inherent powers, on this issue see, *inter alia*, Klabbers, the Life and times of the law of international organizations, 70, Nordic Journal of International Law, 2001, pp. 287-317.

<sup>37</sup> Kingsbury, Krisch, Stewart, 2004, pp. 12-14.

<sup>38</sup> As far as the control of the Bank is concerned, see, *infra*, Vertical and horizontal accountability at the World Bank.

<sup>39</sup> Shihata, 1991, p. 95; Bradlow, 1996, p. 57.

As a consequence, the Bank has increasingly resorted to policy conditionality lending, meaning that if a country wants to get a loan, it should first reform some areas of its political system, such as the judiciary system. Those conditionalities have kept on increasing, going from 10 “performance criteria” in the 80’s to 25 in the 90’s and even more in the later years.<sup>40</sup>

What we see is that the World Bank has extended its powers and is exerting its influence over an ever increasing number of aspects of people's lives, and as a matter of fact, over an increasing number of people (there is a wider variety of projects which thus target a wider range of people). It has thus very big powers but it appears to lack legitimacy to do so. Therefore, the new stakeholders (or affected people) have a legitimate claim in asking for more legitimacy.<sup>41</sup>

But then arises the question of what kind of legitimacy those institutions should be endowed with. In the most optimistic hypothesis they should be fully democratic. However, this is very unlikely to happen since claims of global democracy are over-broad, and at the moment, no political theory of global democracy exists.<sup>42</sup> Krisch demonstrates perfectly that all the attempts to “constitutionalize” the international order (thus based on a domestic analogy) are bound to be fundamentally constrained, because they don't fit the new, post-modern paradigm of global governance, which shares very little characteristics with the States.<sup>43</sup>

A more realistic solution would be to render these public institutions satisfactorily accountable.

Indeed, “*the holistic ambition of foundational constitutionalism sits uneasily with the societal and political circumstances of contemporary global politics*”. Therefore, less comprehensive approaches might achieve better in this context. For example, confining the focus on the realisation of narrower political ideals, especially accountability has the potential to achieve satisfactorily results.<sup>44</sup> “*The better is the*

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<sup>40</sup> Woods, 2003, p. 3.

<sup>41</sup> Woods, 2001, p. 90; Woods, undated, p. 20. This is also coherent with the view according to which people most affected by the actions of a public institution should be empowered to hold it to account, see, Keohane, 2006.

<sup>42</sup> Kingsbury, Krisch, Stewart, 2004, p. 35.

<sup>43</sup> Krisch, 2009, pp. 7-10. On this issue, see Klabbers, 2004.

<sup>44</sup> *Ibidem*. On the fact that global governance and globalisation entail a paradigmatic shift, Keohane, 2002, p. 4.

*enemy of the good*” says the poet...<sup>45</sup>

Moreover, and as Sabel argues, global governance is more integrated than inter-States cooperation, but does not equate to a global State yet. Therefore, global institutions provide us with global goods that go beyond humanitarianism, but which fall short of being comparable to what a State can offer. As a consequence, the level of legitimacy they should be endowed with, should match the amount of power they have; and accountability seems to be adequate in achieving this.<sup>46</sup>

In addition to that, Ebrahim and Herz argue that *democratic governance, in all of its forms, has become the uncontested benchmark of political legitimacy. There are no longer any respectable alternatives*”.<sup>47</sup> And since global institutions (and especially international organisations) have been entrusted with tasks that were always thought of as being States' prerogative, their legitimacy depends upon a decision making process which should, at the minimum, conform to basic public expectations and norms about transparency, participation and responsive governance.<sup>48</sup>

As a conclusion, accountability appears to be the adequate instrument to ensure the legitimacy of global institutions, amongst which, the World Bank.

## 2.2 **Development Effectiveness**

Another reason why the World Bank should be accountable lies in its nature as a development institution.

Herz and Ebrahim argue that increased public participation and accountability improve development effectiveness.<sup>49</sup>

Indeed, on the one hand the Bank has since long recognized that there is a high correlation between the extent and quality of public participation and the project

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<sup>45</sup> I suppose that as is always the case with popular wisdom, this is true only to a certain extent.

<sup>46</sup> Sabel, 2005, p. 6.

<sup>47</sup> Ebrahim and Herz, 2005, p. 16. We underline. The authors acknowledge that although many of the government governing the institution are not themselves democratic, it doesn't relieve the Bank from its obligation to abide to basic democratic principles.

<sup>48</sup> Ebrahim and Herz, 2007, p. 4.

<sup>49</sup> Ebrahim & Herz, 2005, p. 18.

quality.<sup>50</sup> In a more recent report, the World Bank states makes the claim that accountability is essential if projects are to successful.<sup>51</sup> That is why the institution has spent 25% of its resources on good governance projects.<sup>52</sup>

Moreover, accountability has been acknowledged as being highly instrumental in giving concerned governments enough information in order to avoid such dramatic events as famine.<sup>53</sup>

The Paris Declaration on aid effectiveness says nothing else when it states that both partner countries and donors is to enhance mutual accountability and transparency in the use of development resources.<sup>54</sup>

In an UNDP report, Goetz and Jenkins clearly illustrate the link between a lack of accountability and poor development results in key areas such as sustainable livelihoods in terms of land, wages, education, and healthcare, the quality of the environment or even the physical security of affected populations.<sup>55</sup> In particular, they clearly link failures of dam projects with a lack of accountability of the World Bank, as was the case with the Lesotho Dam.<sup>56</sup>

So, accountability is necessary in order to achieve the promises a project is supposed to deliver. It is an element which plays a crucial role in ensuring that the project process runs smoothly in accordance to the standards and guidelines it should respect, and that the public powers in charge of the implementation act in responsively towards their affected populations.

On the other hand, development has long been recognized as a comprehensive process (cf. *supra* chapter I) which aims not only at alleviating poverty, but also at giving people leverages to determine their own lives. Therefore, people affected by the Bank's development project should be able to hold it to account.<sup>57</sup>

This is coherent with the fact that the Bank aims to alleviate poverty understood not only as a lack of assets, security and power. In other words, lacking the power to hold governmental and international agencies to account is a constitutive element of

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<sup>50</sup> See, e.g., World Bank, 2003(c); World Bank, 2001; World Bank, 1998(b).

<sup>51</sup> World Bank, Annual Review of Development effectiveness, 2006, p. 33.

<sup>52</sup> *Ibidem*, See also, World Bank, 2006.

<sup>53</sup> Sen, pp. 51, 180-181; Singer, 2002, p. 132.

<sup>54</sup> Paris Declaration on aid effectiveness, 2005, p. 8.

<sup>55</sup> Goetz and Jenkins, 2002, pp. 11-34.

<sup>56</sup> *Ibidem*, p. 27; See World Commission on Dams, 2000.

<sup>57</sup> Ebrahim and Herz, 2005, p. 18.

poverty.<sup>58</sup>

Equally, a rights-based approach to development and sustainable development as endorsed by the World Bank implies that development institutions should be fully accountable for their actions. As “duty bearers” they are obliged to behave responsibly, look out for the larger public interest and be open to public scrutiny.<sup>59</sup>

Thus accountability is crucial in order to achieve effective development.

### **2.3 Conclusion**

As a consequence, the World Bank should be accountable for several reasons.

There are two principal arguments.

First, as a public institution composed by sovereign States, endowed with huge competences, and exerting a big influence, it is a matter of legitimacy that the institution is accountable (just as any other institution of global governance).

Secondly, development effectiveness commands that all public institutions be accountable, and this for two reasons. On the one hand, accountability helps ensuring that the projects are run as they should reach their goals. On the other hand, empowering the poor and helping them to become accountability holders is part of the poverty alleviation mission of the World Bank. It is an important element of the concept of sustainable and effective development as it has been endorsed by the institution.

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<sup>58</sup> World Bank, 2000, p. 19.

<sup>59</sup> Ackerman, 2005, p. 7.

## Chapter III: Accountability at the World Bank

### 3.1 Introduction

This chapter will be dealing with accountability.

It will first analyse the concept as such and determine what are its constitutive elements.

Secondly, it will examine and assess the accountability mechanisms currently existing at the World Bank.

It will then outline the reasons why accountability is still not optimum, and will try to provide some conceptual solutions to the existing problems.

Before starting this chapter I would like to re-emphasise that I am deeply convinced that accountability is far from being enough. Ideally, all global institutions should be fully democratic. But as we have seen, global democracy is far from being achieved, at least, in the near future. That is the reason why I explore the notion of accountability: in my opinion, it is the form of democratic responsibility which is, as far as today, best adapted to the global paradigm..

In this respect, I position my work in a perspective analogical to that developed by Kingsbury et al. in the Global Administrative Law project.<sup>60</sup>

### 3.2 What is accountability?

Accountability has been defined as “*the process of holding actors responsible for their actions*”, or “*the means by which individuals and organizations report to a recognized authority and are held responsible for their actions*”; or “*the capacity to demand someone to engage in reason-giving to justify his behaviour, and/or the capacity to impose penalty for poor performance*”.<sup>61</sup>

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<sup>60</sup> See, Kingsbury, Krisch, Stewart, 2004; and more generally the Global Administrative Law project, available at <http://iijl.org/GAL/>.

<sup>61</sup> Ebrahim and Weisband, 2007, p. 4; I underline. See also, Schedler, 1999, pp. 14-17.

Mulgan defines accountability as a process in which one is being “*called ‘to account’ to some authority for one’s actions*”.<sup>62</sup>

According to those views, accountability is a kind of relationship with specific features. It is a relationship since accounting implies interacting in order to justify one’s actions. This relationship involves a certain distance between the two actors, which emphasises the necessary independence of the principle and therefore helps maintaining the difference of status between the two actors.<sup>63</sup> It also implies a certain kind of authority in order to impose sanctions in case of shortcomings.<sup>64</sup> This implies that both parties are not on an equal footing. It is thus a principle/agent relationship.

Another preliminary point is to determine what are accountability’s (as a concept) constitutive elements.

The literature identifies three of them.<sup>65</sup>

- Transparency: collecting data and information and making them accessible.
- Compliance: monitoring and auditing the person who’s accountable, and eventually publishing this information.
- Enforcement: The ability to impose sanctions in case of shortcomings.

Some authors add a fourth category, called “justification”, which entails providing clear reasons for taking or not taking a given action.

However, “justification” might as well be included in the “compliance” category since one need to justify his actions in case of monitoring and auditing.<sup>66</sup>

This thesis will therefore stick to the threefold constitutive elements of accountability.

Originally, accountability is a fundamentally democratic concept. One could even argue that it is the cornerstone of democracy.<sup>67</sup>

Indeed, governments are elected by the people and are ultimately answerable to them.

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<sup>62</sup> Mulgan, 2000, p. 555.

<sup>63</sup> Dann, 2006, p. 16.

<sup>64</sup> Mulgan, 2000, p. 555.

<sup>65</sup> Ebrahim and Weisband, 2007, p. 5; Woods, undated, p. 4.

<sup>66</sup> Ebrahim and Weisband, 2007, p. 4

<sup>67</sup> Woods, undated, p. 4.

In case the citizens are not satisfied with the outcomes of the governments' work, they can sanction them through elections. In the words of Goetz and Jenkins, “*accountability is conventionally conceived as a way of providing citizens a means to control the behaviour of actors such as politicians and government officials to whom power has been delegated, whether through elections or some other means of leadership selection.*”<sup>68</sup>

Thus, elected politicians are held into account by voters. In turn they hold public administrators and bureaucrats into account, thereby spreading accountability to the whole government.<sup>69</sup>

This is known as vertical accountability. In a democratic State, vertical accountability therefore refers to mechanisms through which citizens directly hold the government accountable. This can be done through elections, but also through referendum or lobbying.

However, vertical accountability, as necessary as it is, is not sufficient as such to perfectly hold a government into account. That is why mechanisms of horizontal accountability have been developed, i.e. mechanisms in which the holding to account is indirect, delegated to other powerful actors.<sup>70</sup> Typical mechanisms of horizontal accountability include at State level the use of quasi-independent review bodies such as specialized commissions, control by the judiciary branch,<sup>71</sup> or the use of administrative courts.

Thus accountability understood as a relationship in which “*A is obliged to explain and justify his actions to B, and which includes the possibility that A may suffer sanctions if his conduct, or explanation for it, is found wanting by B*”<sup>72</sup> fits perfectly in a State framework. But does it also work at supranational level, and more specifically at World Bank level?

In the following sections, we will look at the accountability mechanisms which exist at World Bank level and see whether the requirement of having the 3 core components of accountability (transparency, compliance and enforcement) is met.

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<sup>68</sup> Goetz and Jenkins, 2002, p. 6.

<sup>69</sup> Woods, undated, p. 4; Ebrahim and Weisband, 2007, p. 4.

<sup>70</sup> Goetz and Jenkins, 2002, p. 7.

<sup>71</sup> Ebrahim and Weisband, 2007, p. 6.

<sup>72</sup> Goetz and Jenkins, 2002, p. 5.

### 3.3 Accountability at the World Bank: Vertical accountability<sup>73</sup>

In this section, we will have a look at the vertical accountability structures existing at the World Bank.

If we remember that vertical accountability is conceived as a way to enable citizens to directly control the behaviour of their governments to whom they have delegated power (cf. Supra, accountability definition), then vertical accountability at World Bank level would mean giving citizens of Member States the possibility to exert some kind of direct influence over the actions and decisions of the Bank. This is made possible through the existence of bodies which guarantee the representation of Member States within the Bank. In principle –and thanks to those representative bodies- Member States will exert some influence over the Bank according to the wishes of their citizens, since the former are accountable to the latter.

To understand how vertical accountability is organized at the World Bank, one needs to look at the structure of its governance.

#### 3.3.1 The “governance structure” of the World Bank

The Bank’s Articles of Agreement (i.e. its constitutive document) set out a vertical structure of accountability.

The staff, who undertake research and prepare recommendations are appointed and eventually dismissed by the management (ultimately by senior management). The management, and especially its head, the president, are appointed and dismissed by the Board of Executive Directors. The Executive Directors are selected by governments to represent them. They are themselves responsible before the Board of Governors which meets once a year and which is composed of ministers of finance (or central bank governors) of each government, each government being accountable to their own constituency.<sup>74</sup>

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<sup>73</sup> On this issue, see Woods, 2000; Woods, 2006(a); Woods 2006(b). The personal webpage of Ngaire Woods is full of articles written by the latter over the subject, available at <http://www.globaleconomicgovernance.org/categories/publications/staff-publications/publications-ngaire-woods>, (consulted 06/04/2009).

<sup>74</sup> Woods, undated, p. 5.

Each Member State is represented within the Board of governors. They meet once a year to review operations and basic policies. *They delegate most functions and the responsibility for the day-to-day running of the organization to 24 full-time **Executive Directors.***<sup>75</sup>

The Board of Executive Directors is composed of 24 directors, 5 of whom are elected by the 5 States owing the largest amount of Bank capital. The other Directors represent several countries at the same time. According to the articles of agreement, the Directors have all the necessary powers to the daily operations of the Bank. For that purpose, they meet twice a week.

The Directors are officials from economic agencies from within Member States, which means that their superiors are the ministers of finance and Central Bank Governors, the very same who sit in the Board of Governors.<sup>76</sup>

The President conducts the ordinary business of the Bank under the direction of the Executive Directors. He is also responsible for the organization, appointment and dismissal of the officers and staff. He is helped in his task by over 20 vice-presidents.<sup>77</sup>

Thus States are represented through the Board of Executive Directors and the Board of Governors. However, the best way for them to make their voice heard is through the Executive Board.

In other words, the WB is accountable to the people thanks to their representation in the Boards.

However, and as we will now see, this representation is flawed for a number of reasons (voting shares, number of seats, lack of transparency etc...), and so is the accountability. Since the Board is the organ where the constituencies are represented, any malfunctioning in the latter equates to a representativeness gap and therefore a direct hindrance to accountability.

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<sup>75</sup> [World Bank, website: Governing Structure of the World Bank.](#)

<sup>76</sup> Woods, 2002, p. 958.

<sup>77</sup> World Bank Website, Governing Structure of the World Bank.

### 3.3.2 Accountability Flaws at Executive Board Level

This section will be dealing with the numerous accountability flaws present at the Board of Executive Directors.

As we have just stated above, the Board allows for accountability because it allows for State representation. Therefore, any representation problem equates to an accountability problem. More generally, any malfunctioning of the Boards results in representativeness flaws and consequently, in accountability flaws.

#### 3.3.2.1 Affected citizens have few opportunities to directly influence Board decision-making

The Board, as we have seen, is a mechanism of vertical accountability. This means that it must allow for direct accountability to the member States' constituencies. This very accountability entails that those citizens should be able to exert some kind of influence over the Board's decisions.

However, possibilities of direct influence, i.e. of meaningful public engagement (such as direct petitioning for example) are quite limited. This is due to a number of reasons.

First, the Board meets in closed doors, and its sessions are shielded from public scrutiny. In addition to that, and in most cases, the public doesn't know the content of the Board's discussion, since many critical loan documents are disclosed only after they have been approved by the Board.

Finally, the Board seldom (if never) accepts to interact directly with the public (through, for example, the holding of public hearings).<sup>78</sup>

As we can see it, the possibilities for the public to exert some kind of direct influence –and therefore hold to account- the Board are very limited.

#### 3.3.2.2 Representation of affected people is compromised by the fact that voting shares are disproportionately allocated to donor countries.

Another problem is the Board's decision making process and the weighted voting powers it attributes to its members. Indeed, **in the Board, the voting power of each**

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<sup>78</sup> Ebrahim and Herz, 2005, p. 21.

**member is exercised by the Director representing them.**<sup>79</sup>

As a matter of fact each country has the same number of basic votes (250). This is supposed to represent the principle of equality within the institution. In addition to that, countries are given additional votes, the so called weighted votes. Those votes depend upon the number of quotas a given country has within the Bank. Those quotas are determined by the countries' relative weight in the world economy.<sup>80</sup>

The problem with this system is that it has been unchanged since 1944.

But if there was, at that time, a sound rationale for it, things are nowadays quite different. Indeed, in the aftermath of WWII, the IBRD was concerned with the reconstruction of the countries affected by the war. Moreover, its membership was much smaller. This means that the borrowers were the most important shareholders.

However, things changed over time: the membership dramatically increased (partly due to decolonization); with the Marshall Plan, the Bank shifted its activities towards development of emerging countries; and also the Bank has been more and more involved with the borrowing countries' internal policies through policy conditionality on aid.<sup>81</sup>

The result is that most concerned countries (i.e. the borrowers) have very little to say concerning loans that are not only concerned with their economic balance, but also with an always broader range of aspects of their internal policies (good governance, civil service, judicial reform etc...). The countries that are primarily affected by the projects have thus very little to say and cannot hold the Bank accountable. This is problematic since it should be accountable to them in the first place. Moreover, the weight of the basic votes has diminished through time, falling from 14% in 1955 to 3% today. This only emphasises the inequalities between Board members.<sup>82</sup>

### 3.3.2.3 Representation of affected people is also compromised by the inequitable allocation of Executive Director seats.

The Board is not representing countries in a fair way. Indeed and as mentioned before, out of the 24 Directors only the big 5 (+ China, Russia and Saudi Arabia) have their own director. Other countries are put into groups, each group being represented by

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<sup>79</sup> Woods, 2001, p, 85.

<sup>80</sup> *Ibidem*.

<sup>81</sup> Woods, 2001, pp. 85 and 86.

<sup>82</sup> Woods, The challenge of good governance for the IMF and World Bank themselves, 2000, p. 9.

one director.<sup>83</sup>

This means that most countries are totally ill-represented, since the Executive Directors refer to the Boards of Governors (where each country has its own Governor).<sup>84</sup>

#### 3.3.2.4 Representation of affected people is further diluted by the United States' prerogative to name the Bank's President.

Another way in which the World Bank doesn't seem accountable is with the nomination of its President. Since the creations of the Bretton Woods institutions there exists an agreement according to which the President of the WB is a US citizen whereas the President of the IMF is a European one.<sup>85</sup>

However, given the considerable powers that the President now enjoys (cf. *infra*, next point), it results in giving the US much more power than what their voting shares suggests.<sup>86</sup> Although, the Bank president is working in total independence and is free from any political influence,<sup>87</sup> such a strong kin with the United States might raise suspicion as to whom he is truly committed to and as to what is the extent of the World Bank accountability towards the US.

#### 3.3.2.5 Accountability to affected people is undermined by the fact that Board oversight of management and staff is often perfunctory.

As mentioned before, the Board is the central accountability organ of the Bank. However, it is not exercising control and oversight as it should. There are several reasons for that.

First of all, questions are to be raised as to the competence of the Directors.

Indeed, the issues at stake are complex and technical, therefore overwhelming most Directors. Moreover, they are only in place for 2 years which means that when they finally start having mastery over their topic, it is time for them to go.<sup>88</sup> Directors representing several countries stay even less since there is a rotating system for some

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<sup>83</sup> World Bank Chart of Executive Directors and Alternates.

<sup>84</sup> Woods, 2001, p. 85.

<sup>85</sup> Woods, 2001, p. 88.

<sup>86</sup> Ebrahim and Herz, 2005, p. 24.

<sup>87</sup> Articles of Agreement, article IV, s. 3.

<sup>88</sup> Ebrahim and Herz, 2005, p. 24.

of them.<sup>89</sup>

In addition to that, it is difficult for the Directors to examine every single project, given that there are so many of them.

Secondly, secrecy is an integral part of the Bank's work. Consequently, the staff prefer to present a unified view over the projects presented to the Board, hiding all the internal dissensions. In other words, all the debate is done prior to the submission of the project to the Board, who can only approve or refuse the project.<sup>90</sup>

Finally, according to a World Bank Report, Directors are protective towards the country they represent and expect the same of the others. Consequently, there isn't much space for an enlightened oversight.<sup>91</sup>

Another very important point is how the Bank's management took "*the upper hand in board management relations*".<sup>92</sup> If, in one period, the Board was the main organ, this is not the case anymore. The most important character is now the President. Consequently, the Directors' importance has declined over time, and the President doesn't bother consulting them for important decisions: he refers directly to their government.

This brings us to another point: the relationship between the Board and the president, who is the leader of the Bank. His powers are broad since he has agenda-setting power, that is, he can decide which projects are presented and when they are.<sup>93</sup>

Moreover, since he controls the staff and since there is this culture of discretion within the Bank, all the decisions are taken beforehand, leaving very little if nothing for the directors to decide.<sup>94</sup>

All in all, we can say that the influence of the directors is very limited, and this is therefore also the case for accountability.

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<sup>89</sup> Woods, 2001, p. 87.

<sup>90</sup> World Bank, Report of the Ad hoc Committee on Board procedures, p. 34 in Woods, 2001, p. 87.

<sup>91</sup> IMF external evaluation, in Woods, 2001, p. 88.

<sup>92</sup> Kapur, 2002, p. 59.

<sup>93</sup> *Ibidem*, p. 60.

<sup>94</sup> *Ibidem*, pp. 60-61.s

3.3.2.6 The Bank's accountability to affected citizens is also undermined by weaknesses in transparency, representativeness and accountability of Executive Directors to citizens within borrowing countries.

As we have seen above, the Board operates behind closed doors. Adding to that secrecy is the fact that it is very difficult for citizens to know how the Directors representing them have voted, since decisions are made by consensus, without formal votes being taken.<sup>95</sup> Therefore, since votes are not taken, and since records of the votes and deliberations that preceded the consensus-based votes are not disclosed, citizens simply don't know how their Directors are representing them!<sup>96</sup>

Of course, there is always the possibility that Directors will take the time to explain to their constituencies how they voted. But of course that is very doubtful, especially if one remembers that they are mere members of government agencies.

The fact of being mere agents of governmental institutions takes us to another lack of accountability of the Directors. On the one hand, many member States are not democratic and the question of the Director's accountability is not one worth being asked. On the other hand, in those countries that are democratic, the link between the citizens, their elected officials and the agent they send to the Board is so thin that it "*stretches the lines of accountability beyond their breaking points*".<sup>97</sup>

3.3.2.7 Representation of affected people is further compromised by the fact that finance and development ministries of member states dominate decision-making.

As mentioned before, the Bank is now involved in areas it wasn't supposed to touch upon. Since those topics were not supposed to be part of its mandate, no adequate organ was designed to deal with those issues, thereby creating yet another accountability gap. For in effect, the Board is only composed of economists, who don't have the necessary expertise to deal with such issues as equality of access to health care.<sup>98</sup>

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<sup>95</sup> Ebrahim and Herz, 2005, p. 25.

<sup>96</sup> *Ibidem*.

<sup>97</sup> Nye, J. and Others, 2003, p. 4.

<sup>98</sup> Woods, 2001, p, 89.

### 3.3.2.8 Conclusion: what vertical accountability?

The very clear conclusion that we can draw from this section is that the vertical accountability mechanism is absolutely deficient, and there is no way the World Bank can be held accountable using the Executive Board.

Aware of these deficiencies, the institution has developed mechanisms of horizontal accountability in an effort to improve its record.

### 3.4 **Accountability at the World Bank: *Horizontal* accountability**

In the previous section we have seen how vertical accountability is organized at the World Bank.

This section will deal with the horizontal accountability mechanisms.

Each mechanism will feature a description and an assessment.

In reviewing those different institutions of accountability, one needs to keep in mind the characteristics of accountability. That is, a relationship (involving a necessary distance) between a power wielder and an accountability holder.

Moreover, this concept has three constitutive elements: transparency, compliance/monitoring, and enforcement.

In assessing the existing mechanisms, one has to see whether they put in place an accountability framework which is in conformity to the theoretical requirements of the concept..

### 3.4.1 Transparency

#### 3.4.1.1 Description

As we have seen above, transparency is an essential constitutive element of accountability. Therefore, we should ask the question of how transparent the Bank is. Prior to 1993, the Bank restricted access to nearly all of its documents. This total lack of transparency drew a lot of criticism towards the Bank and as a result, the Bank undertook efforts to become more transparent.<sup>99</sup>

For example, it is now using its website to explain what the scope of its work is and to publish its research papers.<sup>100</sup>

In 1993, it also revised its information disclosure policy, and decided to grant information access to the public. To that end it created a so called “positive list” containing the documents available to the public.<sup>101</sup> It also created the Project Information Documents (PID), which are documents especially written for the public.<sup>102</sup>

Throughout the years the Bank has expanded the number of documents available to the public. In 2002 it undertook a revision of its policy which resulted with a new information disclosure policy making always more and more documents available (such as IEG appraisals or historical information) to the public.<sup>103</sup> In 2005, another reform was undertaken, which –among other things- resulted with the creation of a complaint mechanism in case of denial.<sup>104</sup>

Currently, the World Bank is reforming once more its policy trying to be always more and more transparent. Some of the main features of this reform include a paradigm change, that is, a shift from a “positive list” framework where the accessible documents are the one which happen to be on the list, to a “negative list” approach according to which, all the documents are accessible except for those which are on the negative list. Another feature is the possibility of accessing a substantial amount of information relating to its institutional and internal decision making processes,

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<sup>99</sup> Kaluza & Kaluza, 2008, p.10.

<sup>100</sup> *Ibidem*.

<sup>101</sup> Kaluza & Kaluza, 2008, p.11; World Bank, 2009, p. 23.

<sup>102</sup> Kaluza & Kaluza, 2008, p.11.

<sup>103</sup> World Bank, 2009, p. 23.

<sup>104</sup> Dann, 2006, p. 8.

including Executive Board's documents.<sup>105</sup>

The Bank is undertaking external consultation process on the proposed policy changes from a wide range of stakeholders. These consultations are web-based (until 22/05/09) as well as country based.<sup>106</sup>

In addition to that, the institution has also developed the so-called Operations Manuel. This Manuel contains the procedures and policies which have to be applied to the projects and is now available to everybody on the Bank website.

It includes four types of policy documents: Operational Policies (OPs), Bank Procedures (BPs), Operational Directives (ODs), and Operational Memoranda (OP Memos).

The Operational Policies are the standard which all projects should respect. They also include the so-called safeguard policies, which are Operational Policies dealing with sensible issues such as the environment, or involuntary resettlements (cf. *infra*). Bank Procedures are explanations destined to the staff in order to give them directives as to how implement the Operational Policies. Operational Directives include supplementary guidelines and guidance, and are temporary documents that contain instructions on how to modify existing OPs and BPs, on an as-needed basis. They are retired after their changes have been incorporated in the relevant OP's and BP's.<sup>107</sup>

As we can see, reform after reform, the World Bank has kept on increasing its transparency. In a first move, the rationale was to respond to public pressure and criticism. However, it has subsequently become aware of the necessity of having a sound transparency policy as a fundamental means of fulfilling its many roles.

More specifically, it recognizes the crucial role that transparency plays in order to increase development effectiveness as well as accountability to Member States.<sup>108</sup>

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<sup>105</sup> World Bank, 2009, pp. 3 and 9.

<sup>106</sup> World Bank Website, Disclosure Policy Review & Global Consultations.

<sup>107</sup> Kaluza & Kaluza, 2008, p.11.

<sup>108</sup> World Bank, 2009, p. 2.

### 3.4.1.2 Assessment

Transparency at the World Bank is pretty efficient and suffers no major criticism. The new policy seems to be ever more comprehensive.

The only point of concern is that the information disclosure is set up by the Bank. Therefore it can select which information it opens up to the public, and runs the risk of presenting partial information. There is thus a lack of distance in the transparency process.<sup>109</sup>

Although, the new disclosure policy is opened to public consultation, we will further see that this alone is not a gage of quality.

Transparency is very important: even though it is not sufficient as such to provide accountability, it is the necessary backbone upon which mechanisms of monitoring and sanctioning will have to rely upon.

### 3.4.2 **The Department of Institutional Integrity**

#### 3.4.2.1 Description

The Department of Institutional Integrity (INT) was created in 1999. It has the function of a prosecutor within the Bank, and its mandate consists in “*investigating allegations of fraud, corruption, coercion, collusion, and obstructive practices*”<sup>110</sup> related to World Bank financed projects. It can also investigate claims of serious staff misconduct.

In other words, its mission is to make sure that Bank funds are used according to their original purpose, i.e. to alleviate poverty in the borrowing countries.<sup>111</sup>

To that end, it has unrestricted access to Bank records, documents and properties. Moreover, as a horizontal accountability mechanism, it is institutionally separated from the staff: a look at the Bank organizational chart shows that the INT isn't part of the Bank's hierarchy. Rather, it is above it, at the President level, to whom it reports directly.

If the INT finds evidence of corruption, it can resort to such sanctions as the

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<sup>109</sup> Woods, 2001, p. 91.

<sup>110</sup> The World Bank, About Integrity.

<sup>111</sup> Kaluza & Kaluza, 2008, p. 12 and Dann, 2006, p. 9.

termination of contract with the Bank and a debarment from re-hiring, or disciplinary actions.<sup>112</sup>

The INT has, as far as 2007, a staff of 55 persons. It has been quite active since it was created, and has already sanctioned 337 firms or individuals for fraud or corruption.<sup>113</sup>

#### 3.4.2.2 Assessment

Civil society organizations have heavily criticized the INT. Those critics have been acknowledged by a Panel of Experts –lead by former Fed chairman, Paul Volker– which reviewed the functioning of the INT at the request of the Bank.

The Panel has expressed concern about –among other issues– the Department’s independence. Indeed, the Department Director is also a Counsellor to the Bank’s President (thus creating a conflict of interest and compromising the INT’s independence and credibility). It has also expressed concern about the complex personal, financial and professional relationship the INT has had with US political actors and firms as well as the lack of transparency (suppression of information and failure to investigate certain issues) and integrity the Department has shown.<sup>114</sup>

It also expressed concern about the fact that the INT is an “in house” institution, and therefore it is not immune from this culture of “loan approval”, this client-focused (i.e. governments) approach which emphasises the quantity rather than the quality of the projects and the way they affect local populations (cf. *infra*).<sup>115</sup>

Moreover, the INT has only powers to sanction employees and contractors; the Bank as such however, is not within its sanction range. Hence the following question: is the termination of a contract really critical in making the World Bank more accountable?

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<sup>112</sup> Dann, 2006, p. 9.

<sup>113</sup> Ebrahim and Herz, 2007, p. 7.

<sup>114</sup> Ebrahim and Herz, 2007, p. 8.

<sup>115</sup> Volker, 2007, p. 8.

### 3.4.3 The OED/IEG

#### 3.4.3.1 Description

The Operations Evaluation Department, now called Independent Evaluation Group (IEG), is an independent evaluation unit.

It appraises the development impact as well as the performances (i.e. efficacy and efficiency) of all completed lending operations. In addition to that, it also evaluates the Bank's policies and processes.<sup>116</sup>

The IEG rates the overall performance and sustainability of the projects, with the intention that its findings will be taken into account for the design and implementation of new projects and policies;<sup>117</sup> the aim being to enhance the Bank's effectiveness in development.<sup>118</sup> In the words of the IEG web site, the IEG's aims are *"to learn from experience, to provide an objective basis for assessing the results of the Bank's work, and to provide accountability in the achievement of its objectives"*.<sup>119</sup>

As an independent unit, the IEG is institutionally independent from the rest of the staff and other departments. It reports directly to the Board of executive Directors. Moreover, the Head of the Group is a Director-General who is directly appointed by the Executive Directors.<sup>120</sup>

Since it is independent, it has the sole responsibility to decide which projects it is going to review. The Executive Board has absolutely no influence in this respect.<sup>121</sup>

In performing its reviews, the IEG uses a set of four criteria: outcome, sustainability, institutional impact, and Bank and Borrower performance. The concrete, numbered results vary according to every project.<sup>122</sup>

The Group has often been critical of the Bank's projects. This has led to the creation in the mid-1990's of a Quality Assurance Group (QAG), which is an internal organ. Its function is to support the staff in improving the quality of projects and impacts.<sup>123</sup>

As far as the follow-up of the reviews is concerned, the Group sends its findings to the Executive Directors who are obliged to respond to those reports. Moreover, these

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<sup>116</sup> Woods, undated, p. 13.

<sup>117</sup> Kaluza & Kaluza, 2008, p. 11.

<sup>118</sup> IEG brochure, p. 4.

<sup>119</sup> IEG website.

<sup>120</sup> Dann, 2006, p. 11.

<sup>121</sup> Kaluza & Kaluza, 2008, p. 11.

<sup>122</sup> Dann, 2006, p. 11.

<sup>123</sup> Ebrahim and Herz, 2007, p. 9.

are made public in conformity with the Bank's information disclosure policy.<sup>124</sup>

#### 3.4.3.2 Assessment

The IEG doesn't suffer any criticism analogue to the INT (operational-wise or transparency-wise).<sup>125</sup>

However, some concerns are raised by the tools and the criteria, it uses in its review of operations. They are internalized, in the sense that they are set by the power wielder (the World Bank) himself rather than by the accountability holder. Moreover, the standards used concern efficiency, sustainability and impact assessment, which are more managerial-like rather than formal, legal standards.<sup>126</sup> As Ebrahim put it, the standards are less concerned with the impact the project will have on affected populations (who are supposed to be the main beneficiaries of a given project) than with the technical qualities of the project as such.<sup>127</sup>

Therefore, however efficient the IEG may be, it is not so instrumental in increasing the accountability of the Bank. Rather, it is a good technocratic instrument.

In addition to that, its sanctions are very mild (cf. *supra*, mainly publicity orientated).

#### 3.4.4 **The Inspection Panel & Safeguard policies**

##### 3.4.4.1 Safeguard Policies

In the first chapter we have seen that Bank-financed project can result with harmful consequences in term of human rights. This is particularly true for projects involving involuntary resettlement. Indeed, resettled people experience a decline in their standard of living, since they are forced to leave their home, quit their job etc... Overall, involuntary resettlements have devastating cultural, economic and health effects on the displaced people.<sup>128</sup> The Narmada Dam Commission found that the resettlement of indigenous people caused sufferings related to unemployment, debt,

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<sup>124</sup> Dann, 2006, p. 11; IEG brochure, p. 3.

<sup>125</sup> After the first Information Disclosure Policy of 1993, the IEG opened its annual review of Evaluation Results and summaries of evaluation reports for selected projects. Since that time, a lot more has been made available to the Public.

<sup>126</sup> Dann, 2006, p. 18.

<sup>127</sup> Ebrahim and Herz, p. 9, footnote 15.

<sup>128</sup> Kaluza & Kaluza, 2008, pp. 13-14.

hunger and cultural breakdown.<sup>129</sup> Those are all terrible consequences which can be framed in terms of human rights violations.

As a consequence of those failures which are in direct contradiction with the Bank's objectives of alleviating poverty, Civil Society Organizations (CSO's) have, in the 1980s, increasingly pressured the Bank to become more accountable for the negative environmental and social impacts of its operations.<sup>130</sup>

As a response to those claims, the World Bank has adopted a set of eleven safeguard policies which take into account the negative impact of lending operations in such areas as environmental impact, involuntary resettlement or the impact on indigenous people.

These policies represent the cornerstone for the Bank's accountability for its projects' impact. Indeed, they can be considered as normative commitments stemming from the Bank regarding projects or programs. A project/program presented by a borrowing member will be eligible to support only if its process, as well as its development outcome are in compliance with the safeguard policies.<sup>131</sup>

The World Bank website summarises well the scope of these policies: "*the objective of these policies is to prevent and mitigate undue harm to people and their environment in the development process. These policies provide guidelines for bank and borrower staffs in the identification, preparation, and implementation of programs and projects.*"<sup>132</sup>

In order to mitigate undue harm to people, these policies also include minimum standards for the protection of the rights and interest of locally affected people. Moreover, they also provide some assurances that the cost of the projects will not be disproportionately borne by affected people and/or their environment.

Some policies go even so far as to provide local communities some minimum opportunity to participate in decisions directly affecting them (indigenous people, involuntary resettlement and environmental assessment).<sup>133</sup>

#### 3.4.4.2 The Inspection Panel<sup>134</sup>

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<sup>129</sup> See, World Commission on Dams. 2000.

<sup>130</sup> Ebrahim and Herz, 2007, p. 9.

<sup>131</sup> Ebrahim and Herz, 2007, p. 10.

<sup>132</sup> World Bank, on safeguard policies.

<sup>133</sup> Ebrahim and Herz, 2007, p. 10.

<sup>134</sup> There is an extensive literature about the Panel. See among many, Shihata, 2000; Shihata, 1994;

#### 3.4.4.2.1 Introduction

However, adopting those safeguard policies wasn't enough to prevent human rights violations occurring in Bank-financed projects.

One of the most publicized project which heavily resettled local populations and caused significant environmental was the Sardar Sarovar Dam on the Narmada River in India.

Following that disaster, the then World Bank President (Lewis Preston) commissioned an independent review of the project known as the Morse Commission. This commission found that the Bank had acted in violation of its safeguard policies. Those commission findings combined with the concomitant release of the Wapenhans report over the Bank's inner "culture of loan approval" and corruption (cf. *infra*) and a US Congress push for more accountability at the World Bank resulted in the creation, in 1993, of the Inspection Panel.<sup>135</sup>

The creation of the Panel has been seen as an unprecedented step towards accountability, since it was the first forum where local populations harmed by Bank projects could directly hold the bank into account for harmful consequences of its projects.<sup>136</sup>

The aim of the Inspection Panel is to address the concerns of those who are "*affected by Bank projects and to ensure that the Bank adheres to its Operational Policies and procedures in the design, preparation and implementation of [its] projects.*"<sup>137</sup>

#### 3.4.4.2.2 Structure/Composition

In order to perform the task of holding the Bank accountable, the Inspection Panel enjoys some institutional independence.

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Fox & Brown, 1998; Fifty Years Is Enough Campaign, 1999; Fox, 2000; Hal & Slaughter, 2006; Circi, 2006; Bradlow, 1993-1994; Hunter, 2003; Boisson de Chazournes, 2005. See also, World Bank, *Selected Bibliography of Publications related to the Inspection Panel*.

<sup>135</sup> Fox, 2002, p. 138.

<sup>136</sup> Kaluza & Kaluza, 2008, p. 14.

<sup>137</sup> World Bank, 2003(c), p. 3.

It is composed of three members –each one of them of a different nationality from a member State- who are directly nominated by the Executive Directors. These members cannot have been employees of the Bank in the two years preceding their appointment. Nor can they work in the Bank after having served on the Panel.<sup>138</sup>

#### 3.4.4.2.3 *Modus Operandi*

Complaints before the Panel can be made by any group of people (two is enough).<sup>139</sup> This group must show several things. First, they have to live in the project area (or represent people who do) and are likely to be affected adversely by a project. Second, they must show that the actual or likely harm results from a Bank failure to follow its policies and procedures (i.e. Operational Policies, bank procedures and operational directives).

Finally, they must have first exposed their concerns to the Bank management, who in turn must have given them an unsatisfactory outcome.<sup>140</sup>

To summarize, the Panel will be competent to receive the complaints of people who have been harmed by a Bank project, the harm resulting from a failure of the Bank to respect its policies, including the safeguard policies.

Once the Panel has received the complaint, it will provide an independent advice to the Executive Directors about whether to authorize an investigation.<sup>141</sup>

To base such a recommendation, the Inspection Panel will base itself upon the claimant request (which it has at that point already considered as valid). It will take into consideration the Management's response to the complaint. Indeed, upon receipt of the claim, the Management must give the Panel its version of the facts, admitting that it has failed to follow the policies or on the contrary providing evidence that it has complied with the latter.

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<sup>138</sup> World Bank, Resolution establishing the Inspection Panel, 1993, pp. 2-5, Hereinafter, Inspection Panel Resolution.

<sup>139</sup> Carrasco & Guersney, 2008, p. 585.

<sup>140</sup> Woods, undated, p. 13; Carrasco & Guersney, 2008, pp. 12-18.

<sup>141</sup> Kaluza & Kaluza, 2008, p. 14.

Finally, the Panel can also base its recommendation upon a preliminary study which might entail a visit on the project site

Once this recommendation (known as the Eligibility Report) has been made, it is up to the Board to decide whether the matter should be further investigated.<sup>142</sup>

If it is authorized, the Panel will therefore conduct a thorough investigation to determine whether or not the Bank has violated its policies.

Once it has finished its enquiry, it has to submit its report to the Bank management which must produce a reply, eventually containing recommendations for remedial measures (such recommendations are called “action plans”).

The Board will then jointly examine the Panel and the management’s reports; after what it will have to contact the complainant and inform him of the outcome of the investigation and whether it has ordered any actions. Such actions could include requesting the Panel to verify if the Management has undergone the appropriate consultations about the proposed remedial measures (in case it did propose any), but they can also be more substantial, as was the case with the planned Arun III dam: the Board decided to withdraw the project before the construction even began, thereby reversing seven years of project planning.<sup>143</sup>

Once the Requester has been contacted by the Board, the process is finished.

#### 3.4.4.3 Assessment

The inspection Panel is viewed as a redress mechanism.<sup>144</sup> Therefore it is entrusted with the task of enforcing Operational Policies, and should be able to address satisfactorily any situation of non-compliance.

However, we will see that the Panel is not adequately crafted as an efficient redress mechanism.

Two main critics of the panel are directly relevant to our discussion over accountability. The first one is the Panel’s lack of power to grant remedy or to follow-up with the remedial proposals of the management, and the other is a lack of

<sup>142</sup> Carrasco & Guersney, 2008, pp. 20-22.

<sup>143</sup> Fox, 2002, p. 142.

<sup>144</sup> Ebrahim and Herz, 2007, p. 9.

independence.

#### 3.4.4.3.1 *Lack of power to grant relief*

As we have seen, the Inspection Panel is thought of as being a redress mechanism, that is, an agency dealing with the third constitutive element of accountability: enforcement. However, how can it enforce respect for Operational Policies if it cannot provide relief to affected population, or sanction in some way Bank management?

Indeed, the Panel is not intended to recommend any type of remedial measure to the Bank or to directly grant relief to affected populations. It can only determine whether or not the Bank has complied with its own policies.<sup>145</sup>

As we have seen, it is up to the Board to decide whether to take any measures, and it results from an investigation made by J. Fox (in 2002) that out of 15 claims brought before the Panel, only 4 resulted in concrete measures ordered by the Board.<sup>146</sup>

Moreover, the Panel has no power whatsoever to oversee the Management-proposed remedial to the problems found by the Panel (cf. *supra*, management's response to Panel investigation).<sup>147</sup> Unsurprisingly, the Board has failed to conduct an efficient follow-up of management recommendations.<sup>148</sup>

In such conditions, there is absolutely no way the Panel can effectively work as an enforcement/redress mechanism, since the only way remedial measures can be provided is through a Bank's decision (be it the Board or a management "action plan"). In other words, the remedy depends upon the controlled agent!

#### 3.4.4.3.2 *Lack of independence*

The lack of independence results from the possibility for the Bank to directly interfere in the investigation work. The management has at several occasions responded in extremely defensive or adversarial ways to the Panel's findings (thereby challenging its interpretation of the situation) in order to influence the Board who has the last say

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<sup>145</sup> Treacle, Fox, and Clark, 2003, p. 267.

<sup>146</sup> Fox, 2002, pp. 143-144 and p. 151.

<sup>147</sup> Kay Treacle *et al.*, 2003, p. 266.

<sup>148</sup> Clark, 2002, pp. 219-220.

over any remedial measures.<sup>149</sup> The management has also been suspected of manipulating information, obstructing the truth and discrediting the Panel's work.<sup>150</sup> The Panel has absolutely no power to shield himself against those institutional attacks which grandly put its independence at jeopardy.<sup>151</sup>

### 3.4.5 **What conclusions?**

We can map the 3 constitutive elements of accountability at the World Bank as follows.

- Transparency → Information disclosure Policy.
- Monitoring → IEG and INT
- Enforcement → Inspection Panel.

As has been argued, the three components build upon each other: an institution will only be sanctioned once the monitoring has revealed some shortcomings. Equally, the success of the monitoring depends upon how transparent the institution is.

So, at least in principle, the three constitutive elements are present at World Bank level.

However, a big shortcoming exists: there is no real redress mechanism.

This is supposed to be the role of the Inspection Panel, but we have seen how illusory it is to believe it would provide sanction (or any kind of enforcement such as remedial measures). Equally, the other mechanisms have their own sanctions, but they are publicity-oriented. They appeal to the public for some kind of reputational sanctioning, but they are devoid of hard and curtailing effects.<sup>152</sup> However, what makes accountability a distinct notion from concepts such as answerability is the sanction element.<sup>153</sup> The guilty must pay for his wrongdoing! But this is totally absent from the horizontal accountability infrastructure of the Bank.

In addition to that, there is also an overarching, structural deficiency: the lack of

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<sup>149</sup> Kay Treacle *et al.*, 2003, p. 254.

<sup>150</sup> Wahi, 2005, p. 358.

<sup>151</sup> Carrasco & Guersney, 2008, p. 600.

<sup>152</sup> Dann, 2006, p. 18.

<sup>153</sup> Goetz and Jenkins, 2002, p. 5.

distance. All those mechanisms are internal. This directly contradicts the definition of accountability as a relationship involving a necessary distance between the two actors. This lack of distance results in diminishing the independence and hence, effectiveness of these agencies; be it the Inspection Panel who suffers from interferences stemming from the management, the INT which has been convicted of conflict of interest, or the IEG whose standards have little to do with increasing accountability.<sup>154</sup>

We are therefore facing issues over the independence, as well as over the operating standards: which ones, and who is to set them? These problems result from a missing distance!

To state it in a more picturesque fashion, the controller is the controlled!

So, the problem lays not so much in the existence of mechanisms, but rather in their *modus operandi*. They do not qualify as adequate accountability mechanisms.

If we go back to the definition of accountability, it is no wonder that the existing mechanisms' record is a mixed one.

### **3.5 To whom should the World Bank be accountable?**

Over the preceding pages we have undergone an in-depth analysis of the accountability mechanisms existing at World Bank level.

Nevertheless, we have so far eluded a critical element in order to fully understand the concept of accountability: to whom should the Bank be accountable?

As we've seen before, accountability is an external relationship between 2 actors, according to which one actor has to justify his behaviour to the other. In case this justification is not satisfactory, the accountability holder must have the capacity to impose penalty for poor performance (cf. *supra*, Section II). But if we don't know who the principle is, who the accountability holder is, then this relationship is not complete and cannot work properly.

In the case of the World Bank it is obvious that it is the Bank which has to account,

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<sup>154</sup> As far as the operative standards of the Inspection Panel and the INT are concerned, there is no real concern: the Inspection Panel refers to safeguard policies which are clear and relevant legal standards; the INT refers to globally accepted legal rules of fiscal accountability, *see* Dann, 2006, p. 18.

but to whom?

Authors have suggested that it should be held accountable to all of its stakeholders;<sup>155</sup> but who are they? They are the Member States of the Bank, as well as their constituencies.

Thus, on the one hand we have Donor States and their constituencies. They are legitimate stakeholders since they fund the World Bank with tax money. On the other hand, we have Borrowing member and their constituencies. They are certainly stakeholders since they are either asking for a loan, or they are directly affected by the project their government is building thanks to a Bank loan. Borrowing members and their constituencies therefore have diverging interests as was outlined in the “culture of approval” section.

But this is not all. Other constituencies can also claim to be legitimate Bank stakeholders. This includes all the other actors which are directly involved or affected by the projects (e.g. NGO’s or private sector businesses). Indeed, we have seen that the Bank collaborates with private corporations (they may even be sanctioned by the INT, cf. *supra*) and that NGO’s and CSO’s have been recognized as legitimate stakeholders and representative of other directly affected constituencies. If we think of the Bank as being an important actor of global governance, it is logical that other global governance players claim to be legitimate stakeholders.

N. Krisch elegantly outlines the problem. According to him, there are three competing approaches to what a global constituency is: the nationalist (the constituency of each State), the internationalist (the States as such) and the cosmopolitan (a global civil society represented by transnational NGO’s).<sup>156</sup>

So, that makes a lot of people who should be considered as stakeholders and in different respects. For example, citizens of donor countries are primarily seen as taxpayers. However, what if they are employees of a corporation doing business with the WB, or if they are members of a transnational NGOs advocating for more empowerment of affected populations? A sole individual may have several, diverging interests. If we broaden the frame, we can actually say that the World Bank is accountable to roughly 6.5 billion people having conflicting interests, but also

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<sup>155</sup> Kaluza & Kaluza, 2008, p. 2.

<sup>156</sup> Krisch, 2006, pp. 253-256.

simultaneously advocating conflicting interests; and what about States' interests?<sup>157</sup>

The problem we are facing is the following: we are struggling to determine the accountability holder, i.e. the constituency before which the World Bank is accountable.

But even if we managed somehow to clearly determine who can be considered as a stakeholder, another problem arises there are diverging interests among stakeholders: how can an institution be accountable to a constituency if the latter doesn't know what it wants?

In a subsidiary fashion, I shall add another issue: the stretched link to the constituencies: a Sub-Saharan citizen may well be an accountability holder, but he is so distant from the Bank that there is no way he can hold it accountable.

As we will see now, the fact that it is impossible to find a well determined constituency is due to the fact that accountability is a fundamentally democratic, and thus, domestic concept.

### 3.5.1 Accountability, a domestic concept?

As I have said at the beginning of this chapter, accountability is originally framed within democracy, therefore operating at State level.<sup>158</sup>

The first reason why it works best at State level is because there is a well-defined public (thus a well defined principal), acting as an accountability holder. The existence of this well-defined public helps answering the following questions, which are essential if we want to have efficient accountability.

- 1) What constitutes an abuse of power, and why?
- 2) Who is entitled to hold power-wielders accountable, and why?

In a representative democracy, power is only legitimate when it is authorized by the

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<sup>157</sup> See Krisch, 2006, p. 251, where he explains that even within states, a single individual can be thought of in different terms, and can wield different interests. That is especially true in Federal States like Germany.

<sup>158</sup> Although some have made claims about global democracy, cf. Held and his cosmopolitan democracy, there is a stable consensus that as far as today there is no valid theory of democracy at world level. See Kingsbury, et al. 2004.

legitimate consent of those who delegate it, i.e. the citizens. Therefore, power will remain legitimate as long as it is used in accordance to the reason why citizens have given their consent to delegate it. This reason is the pursuit of the general interest.

This criterion of political legitimacy (use of the power in accordance to the consent of the people) directly influences the *modus operandi* of accountability: power wielders should be accountable to those who have entrusted them with power. As soon as they use their power in a way which is not compatible with the rationale of the delegation, they should be held accountable.

In the words of Locke, “*the standard for recognizing abuses of power will be violations of that trust: acting beyond the authority of the office or in violation of its purposes*”.<sup>159</sup>

So, power is abused whenever it is used for other reasons than the satisfaction of the general interest, that is, the interest of the public. This same public is entitled to hold power wielders accountable since it has delegated this very power.<sup>160</sup>

We shall note that the public is able to recognize and to tell what constitutes an abuse of power because it is homogeneous; because it shares a common conception of what the general interest is. Indeed, any polity (although it is difficult in the case of multicultural States, cf. Krisch, 2009) shares an ‘imagined community’; meaning that people share a sense of common destiny and are in the habit of communicating with one another on issues of public policy.<sup>161</sup> They share a common ethos, a common set of values that unites them as a people. Or, to put it in Habermas’ words, the discursive conditions that ground democracy in the Nation-State are largely absent at the global level.<sup>162</sup>

So, if a given polity is not satisfied with the way the government is making use of the power it has been delegated, it will sanction this very government; mainly through elections. This is commonsensical accountability. It is the mechanism people usually refer to when they talk about accountability. However –and as we will soon see- on a conceptual level this is just one kind of accountability among others. It is known as

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<sup>159</sup> Locke in Grant and Keohane, 2005, p. 32.

<sup>160</sup> Grant and Keohane, 2005, pp. 32-34.

<sup>161</sup> Keohane, 2006, p. 77.

<sup>162</sup> Habermas, *Der gespaltene Westen* in Krisch, 2009, p. 10.

supervisory/democratic accountability. That is, a relationship between a principal and an agent; the former supervising, and –thereby influencing- the actions of the latter.<sup>163</sup>

So, commonsensical accountability is able to work at State level because there is a homogeneous *demos*.

However, there is also another equally important reason why accountability is a concept which works best at State level.

This other reason lies in the fact that accountability is intertwined with democracy which works only at State level. That is because it relies upon a delegation of power from the people to their government. This delegation of power is able to work only because there is a central democratic institution (in general a parliament). Indeed representative democracies rely upon the parliamentary delegation of authority to the government.<sup>164</sup>

This is very important because it means that this central democratic institution is critical in enabling all mechanisms of accountability, vertical and horizontal, to refer to the initial delegation of power, and thus to the principal of the accountability relationship. The situation is to some extent auto-poietic. For example, horizontal mechanisms of accountability can be government agencies (such as an ombudsman) and in that sense they are internal. But at the same time, because of the overarching democratic infrastructure, they can relate to the delegation of power and to the people, i.e., the principals. In other words, there are some elements of external control within the very system.

The existence of a central democratic institution is thus the key element in maintaining distance between the two actors of the accountability relationship.

So, accountability can work at State level because it is intertwined with democracy, which is a fundamentally domestic concept.

This assertion is even truer if we remember that accountability requires a well defined principal; i.e., a *demos*.

In other words, accountability is a domestic concept, and all analogies are bound to be constrained because there is no such thing as global *demos*,<sup>165</sup> and because there is no

<sup>163</sup> Grant and Keohane, 2005, p. 36.

<sup>164</sup> Kingsbury, Krisch, Stewart, 2004, p. 41.

<sup>165</sup> Grant and Keohane, 2005, p. 34.

central democratic institution (which is logical if we consider that democracy only exists at the domestic but not at the global level).

This helps understanding one of the criticisms which I have made to the World Bank horizontal accountability mechanisms. Indeed, I have accused them of being purely internal. However, this is no wonder if we remember that the Bank has proceeded to a domestic analogy, but lacks a central democratic institution which would link the mechanisms to its constituency (which is indeterminate anyway).

Since the situation is different at global level, does it mean that we should turn towards other solutions and dismiss accountability? I don't believe so, for indeed, accountability is a very efficient mechanism since it creates the possibility of sanctioning power wielders. Instead of rejecting it, we should adapt it to the global frame.

Hence, we must turn to other forms of accountability, which might help us bypass the problem created by the shift from the domestic to the global.

Before starting to craft a new accountability mechanisms, one last issue needs to be examined: the so-called "culture of loan approval". As we will now see, this institutional characteristic has a direct influence on all the initiatives undertaken to render the Bank more accountable.

### **3.6 A Bank characteristic having a direct influence over its accountability: the culture of approval**

#### **3.6.1 Introduction**

The culture of approval issue can be framed in terms of vertical accountability. Indeed, we will see below that the staff are responsible to the management, who in turn, is responsible to the Executive Board.

Thus, the staff are held accountable by the management, through a structure of incentives. And it is here that the criticism lies: these incentives are wrong, or at least inconsistent with the declared aim of poverty alleviation. Indeed, the management insists upon the quantity of the loans rather than upon the quality. In other words, they hold the staff accountable for the wrong things.<sup>166</sup>

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<sup>166</sup> Woods, Undated, p. 7.

It was the 1992 Wapenhans report (conducted by an internal World Bank task force lead by Willi Wapenhans) which evidenced this culture of approval. It acknowledged the lending pressures which reward quick disbursement and deference to borrowing governments, most often at the disinterest of affected populations. Lending is valued for promotion, whereas attention to project quality in terms of development aid is overlooked. Moreover, the emphasis is put on technical expertise, thereby neglecting the fact that a project is supposed to be conceived first and foremost in the stake of local people –in order to grant them efficient aid- and that they should therefore be consulted.<sup>167</sup> Importantly, the report noted that the projects appraisal process (supposed to assess the environmental and social impacts) was used mainly as a marketing device for securing loans.<sup>168</sup>

Those critics are still valuable today. A 2005 Bank evaluation of its project in Community—Based and Community-Driven Development (CBD/CDD) suggests they remain significant. More specifically it notes that “*the staff incentive system of the Bank [still] rewards high and fast disbursements*”.<sup>169</sup>

We will now see how this culture of approval has direct consequences on the Bank’s accountability.

### 3.6.2 **Consultations with Civil Society**

In the section over the safeguard policies and the Inspection Panel, we have seen how influential CSO’s have been in achieving this result. Since then, NGO’s influence has gained more and more weight within the Bank, resulting in the creation of more formal NGO participation mechanisms such as the NGO-World Bank Committee, the creation of a NGO unit within the Bank, or a new position called “NGO liaison officer” present in every resident mission. Legitimacy was also build from a political and cultural viewpoint with the issuing of books such as the Participation Sourcebook in 1996.<sup>170</sup>

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<sup>167</sup> Ebrahim and Herz, 2007, p. 6.

<sup>168</sup> World Bank, 1992, pp. 14-16.

<sup>169</sup> World Bank, 2005(a), p. 152.

<sup>170</sup> Ebrahim and Herz, 2007, p. 19.

Since 1997, the Bank has started to revise its safeguard policies. To that end, it deeply engaged with NGO's consultation. This reflects the World Bank's acknowledgement that legitimacy requires some kind of participation of stakeholders, represented by civil society organizations.<sup>171</sup>

We will now see that there is a clear gap between the Bank's self-declared need for participatory approach –which is supposed to increase its accountability- and the way in which this participatory approach is being implemented.

For indeed, the consultation processes have suffered much criticism from CSO's. First of all, CSO's don't believe that their most important concerns have been adequately been addressed. Indeed, although CSO's have called for a strengthening of the standards, the Bank has relaxed them instead. There was a shared feeling among NGO's that they were being used by the Bank to bolster its won legitimacy whilst decreasing the standards. Legitimacy is good as long as it's a PR exercise, but don't count on the Bank to really consider NGO's input! And if there were any input taken into account, the Bank would anyway not provide any feedback over the way it did consider it.<sup>172</sup>

Another element of complaint is that consultations take place only **after** an agreement has been reached between management and the Executive Board. Consequently, consultation is seen as an effort to obtain public validation for decisions that have been already taken, and that can certainly not be changed.<sup>173</sup>

Moreover, the Bank has nearly never outlined which are the issues that are open to negotiation. In other words, CSO's come to negotiate but they don't know what to negotiate!!!

This clearly violates all basic principles of participatory decision-making and has falsely raised expectations about what to expect from those consultation processes.<sup>174</sup>

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<sup>171</sup> Sherman, 2001, p. 4.

<sup>172</sup> Ebrahim and Herz, 2005, p. 30 and p. 35; and Letter from Center for International Environmental Law and International Rivers Network on behalf of 158 other organizations and individuals to James Wolfensohn (resettlement policy), February 21, 2001.

<sup>173</sup> Jenkins & Kalafut, 2003, pp. 3-4.

<sup>174</sup> Ebrahim and Herz, 2005, p. 31

Yet another flaw is that there are no clear rules, no clear framework for the consultation process. Each consultation is held on an *ad hoc* basis, leaving very little certainty as to what exactly will be the participation leverage granted to NGO's. Plus, consultations have been constantly poorly planned and underfunded, revealing some amateurism on the Bank side.<sup>175</sup>

Finally, the Bank has failed to honour the promises it has made to NGO's. For example, it had committed to organize a round-table to discuss its obligations in relation to indigenous people. It first delayed it, and when it finally held it, it refused to discuss the very issue it had been set up for!<sup>176</sup>

As a result, cynicism and disillusionment have flourished, reinforcing the belief that those consultations are nothing more than a PR exercise...

In principle, allowing for CSO's to participate in the reviewing of the safeguard policies can be viewed as an efficient way to increase the Bank's accountability. However, this process is full of drawbacks which are imputable to the Bank's culture of approval. The latter emphasises technical expertise and quick disbursement rather than lengthy process which give voice to constituencies speaking the language of empirics rather than technique, and whose outcome are often uncertain.

### 3.6.3 **Issues with safeguard Policies and the Inspection Panel**

Another blatant example of this inner culture lays with safeguard policies issues.

For indeed, several high-impact projects include provisions intended to guarantee the respect of the safeguard policies. However, the staff has qualified such provisions as a public relation exercise "*designed to buy time from our critics*".<sup>177</sup>

Moreover, NGO's continue to accuse to staff of miscategorising projects in order to avoid environmental and social assessments. Even more worrying, some staff

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<sup>175</sup> See, World Bank, 2000(b).

<sup>176</sup> Ebrahim and Herz, 2005, p. 35.

<sup>177</sup> Brown, 1999.

members have themselves admitted that they know dozens of projects which do not comply with the safeguard policies.<sup>178</sup>

### 3.6.4 **Conclusion**

As we have just seen, the culture of loan approval is more than just an inner characteristic of the Bank. It is something that undermines all of the Bank's efforts to become more accountable, something in direct contradiction with the Bank's endorsement of the right to development understood as a comprehensive process not solely focusing on economic growth.

One could argue that this culture is so deeply rooted within the Bank because it was the dominant approach at the creation of the institution. At that time, this perspective was fully coherent with the Bank's goals of helping Borrowing Members to achieve higher economical development. However, when –under influence of president Mac Namara- the Bank decided to shift its goal to poverty alleviation focusing directly on the people, and therefore introduced such concepts as empowerment or participation, it was already too late to change the Bank's inner culture.

Before any further step, I will now propose a conclusion over the different accountability shortcomings existing within the World Bank.

### **3.7 Accountability at the World Bank, which conclusions?**

So far, we have seen that accountability mechanisms currently existing at the World Bank are constrained for several reasons.

The first reason is less linked to the concept as such than to a particular characteristic of the institution: its culture of loan approval. We have seen how this institutional culture which emphasises quick disbursement at the expense of projects which reach their goal of poverty alleviation has an influence over all the attempts undertaken for rendering the Bank more accountable.

Another element lies in the fact that there is no real redress mechanism. We have seen

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<sup>178</sup> Fox, 2002, p. 153.

that sanction is the third constitutive element of accountability, and that it is this possibility of sanctioning the wrongdoer which makes the concept unique and differentiates it from other ones such as answerability. Normally this task is entrusted to the Inspection Panel, but it has no real means for providing adequate sanctions.

Finally, the last reason why accountability at World Bank level is not efficient is because it relies on a domestic analogy. Indeed, I have shown that accountability is intrinsically linked to democracy which is a concept working at State level only; and so does accountability. Therefore, one cannot simply shift the concept from the State to a global institution, because it results with the following problems: the absence of a well defined constituency which is supposed to hold the Bank into account, and an internalisation of all the accountability mechanisms.

In other words, the task which lies ahead of us is to try to find a solution which would address this three-folded problem (culture of loan approval, lack of sanction, and domestic analogy).

As I have said beforehand, democratic/commonsensical accountability is just one kind of accountability. Therefore, I will now analyse alternative accountability mechanisms and see if they manage to address the shortcomings I have identified.

### **3.8 Different kinds of accountability**

#### **3.8.1 Legal accountability**

One kind of adequate accountability could be legal accountability: the requirement that agents abide by formal rules and be prepared to justify their actions before courts or quasi-judicial arenas.<sup>179</sup>

As Grant and Keohane put it, “*in the absence of a global public comparable to domestic publics, standards have begun to emerge in answer to the question, “What constitutes an abuse of power?”*”<sup>180</sup>

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<sup>179</sup> Grant and Keohane, 2005, p. 36, see also Skogly, 2001, p. 13, according to whom legal accountability “*implies that there are certain legal norms, regulations and/or standards that the individual (...) will be responsible for in case of violation*”.

<sup>180</sup> *Ibidem*, p. 35.

But which rules should be used, and who is to define them? Indeed, if in classical, supervisory accountability the ultimate legitimacy standard is the political sanction by the people, in a legal accountability framework, actions derive their legitimacy from formal standards. This creates the need for a distance, because just as the agent cannot control or sanction himself, he cannot set the very standards he is supposed to abide by.<sup>181</sup>

I will argue for a sustainable development approach to accountability.

Indeed, I believe that sustainable development as defined by the most widely agreed upon texts (such as the rights based approach to development or the Paris declaration on development effectiveness)<sup>182</sup> provide a good exit to the problem.

There are several reasons for endorsing such an approach and viewing it as legitimate.

Of course, sustainable development is one way of conceiving development, and as such it is value-embedded. That is the reason why it does not escape the criticism of the subjectivity of value, meaning that it is impossible to prove its worthiness as values according to an objective referential.<sup>183</sup>

However, the aim of this work is not to discuss the merits of competing approaches of development.

Instead, I believe that a sustainable and effective development approach is legitimate for several reasons.

First, it is the result of an empirical observation which has acknowledged that the growth-focused approach to development isn't appropriate. In other words, there is a big consensus among the development community according to which effective development is the rightful way to alleviate poverty.<sup>184</sup>

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<sup>181</sup> Grant & Keohane, 2005.

<sup>182</sup> See *supra*, Chapter I.

<sup>183</sup> See, *inter alia*, Koskenniemi, *From Apology to Utopia: The Structure of International Legal Argument*, Cambridge University Press 2005.

<sup>184</sup> See *supra*, Chapter I.

Secondly, this approach has also some merits as far as the World Bank is concerned. On the one hand, we have seen above that one of the reasons why the World Bank should be accountable is because it is the recipient of the *imperium* of its members. It is thus a public agency exercising a big influence over the world, being a financial institution at the heart of the efforts in the development field. It is therefore legitimate that such a big actor has to account for its actions. And making sure that the latter respects its mandate of poverty alleviation by abiding by formal standards is a good way to hold it account and to see that it doesn't misuse the power it has been entrusted with by its members.

On the other hand, sustainable development and poverty alleviation constitute to core of the World Bank's mandate. Therefore, holding it to account to standards which express the core of its mission and which constitute guidelines on how it should best accomplish it, can have only beneficial consequences in term of development effectiveness. If projects are more efficient, then the chances are greater that they will effectively reach their initial goals instead. If that were the case, it would put an end (or at least to bring some mitigation) to big project failures which sometimes result with human rights violations (cf. *Supra*, introduction).

Finally, we have also seen that accountability is an intrinsic element of sustainable development: empowering the poor by enabling them to hold public institutions to account is part of poverty alleviation. So, achieving sustainable development will result with more accountability for the World Bank (accountability and development are the two tokens of a same coin: more accountability brings better development results, and increased development results with more accountability).<sup>185</sup>

As a conclusion, a sustainable development approach to accountability should enhance the quality of the World Bank's work and should thereby make it more legitimate by making sure it uses its power correctly.

### 3.8.2 **Market accountability**

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<sup>185</sup> See, World Bank Independent Evaluation Group, 2006, pp. 33 & s; Goetz and Jenkins, 2002, p. 11.

In the precedent section, we have seen that a possible solution to achieve accountability at global governance level is legal accountability (framed in human rights language).

So far, we have addressed the first part of the definition of legal accountability, that is, the need to abide by pre-existing rules and standards.

The second part however upholds that agents should justify their actions before courts or quasi-judicial arenas. This would entail setting-up a quasi judicial body; but which body, and constituted of whom?

If we were to set-up this body, it should be a legitimate one. But what does legitimacy mean? Does it mean representing the constituency of the World Bank? If yes, we are back at square one, and all the efforts made to avoid resorting to a constituency are pointless.

The World Bank has thus tried another solution: an internal mechanism (i.e. the Inspection Panel). However, we have seen that it then faces the problem of lack of distance. This solution is to be rejected as well.

This thesis proposes to turn to another type of accountability: market accountability. This kind of accountability focuses on market actors who will economically sanction another actor if his performances are judged to be poor or deceiving.<sup>186</sup>

Indeed, and as I will argue in the next chapter, development can be framed as a market which includes the World Bank as one of the competing actors. It is evident that market actors (i.e. consumers and investors) favour high quality goods. In the case of the World Bank, this means development projects which reach their goals of poverty alleviation (which is possible if, and only if, the Bank is accountable).

So market sanction can be very efficient since it creates a “quasi-judicial arena”, or at least it exercises the same function.

In other words, it creates a sanction mechanism which is external to the Bank and which needs not determining who the constituency of the Bank is.

Moreover, the market could also address the issue of the culture of loan approval: by

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<sup>186</sup> Grant and Keohane, 2005, p. 37.

transforming a market externality (sustainable development) into market internality, it would create a demand for projects which are human rights respectful, thereby changing the structure of incentives operating at the Bank.

One last issue remains: being sure that development understood as a holistic process, nurturing human development, and thus including broader considerations than strictly economic, growth-based ones is sufficiently connected to the market, in order to transform it into market issue which would ultimately trigger a market sanction.

That is the role of Corporate Social Responsibility: to link the market and human rights!

In the next chapter, we will examine the feasibility of implementing Corporate Social Responsibility instruments at the World Bank, and see if this joint legal/market accountability is able to create an efficient accountability mechanism, adapted to global governance, and more specifically, to the World Bank.

## **Chapter IV: The necessary conditions**

### **4.1 Introduction**

This chapter will try to determine whether the necessary conditions for a CSR based accountability mechanism exist at World Bank level.

In the previous chapter we have seen what the merits of joint legal/market accountability through the use of Corporate Social Responsibility mechanisms are.

However, we must not lose track of the fact that CSR is aimed primarily at corporations, which operate on markets,<sup>187</sup> and, in addition to that, markets are supposed to provide us with sanctions. Hence, the following conclusion: **this accountability system can be applied to the World Bank inasmuch as it is a corporation operating on a market.**

Therefore, this chapter will first show that the World Bank can be considered as a corporation, although of a special kind: I will argue that it has a dual nature as a Bank and as a public institution.

It will then deal with the notion of the market. By providing a definition of what a market is, we will see that the World Bank is operating on a given market: development aid market. This market, involving private as well as public and sovereign actors, is a reflection of globalisation (and, to a larger extent, global governance). It is one expression of it in a particular area. Therefore the characteristics of globalisation can also apply to the market of development aid. In this respect CSR is also relevant since it is a tool born from globalisation and the conceptual changes it entails.

A last remark before starting the chapter: I do not believe that each and every human activity should be thought of as economic activities performed by market actors. Reducing each and every human interaction to something economical bears very little ontological perspectives; there must be more to life than that... Nonetheless, my approach is a pragmatic one: my ultimate goal is to make the World Bank more

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<sup>187</sup> See Marrella, 2007, p. 289 who explains that the aim of CSR is to purport “corporate citizenship”.

accountable, and therefore, if resorting to market-based solutions appears to bear some promises in achieving this goal, then there is no reason why such a solution should be excluded *a priori*.

## **4.2 The dual nature of the World Bank**

In this section we shall examine the nature of the World Bank as an institution and see that it has a dual nature, being both a bank (and thus a corporation) and a public institution concerned with providing global goods.

### **4.2.1 The World Bank: a corporation?**

In order to be able to assert that the World Bank can be seen understood as a corporation, we must first define what a corporation is.

#### **4.2.1.1 Definition of a corporation**

According to a legal dictionary, a corporation is “*an organization formed with state governmental approval to act as an artificial person [i.e. separate from the persons that form it] to carry on business.*”<sup>188</sup>

A business in turn can be defined as “*any activity or enterprise entered into for profit.*”<sup>189</sup> In other words, a business is an activity entered into to earn profit that will increase the wealth of its owners. It will do so by providing goods and services to consumers.<sup>190</sup>

So, the basic aim of any corporation is to make profit.

According to its name the World Bank is... a bank! But what kind of corporation is a bank? In other words, what goods and services does it provide on the market?

A commercial bank is “*an [institution](#) which [accepts deposits](#), makes [business loans](#), and offers related [services](#).*”<sup>191</sup>

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<sup>188</sup> Legal dictionary.

<sup>189</sup> Legal dictionary

<sup>190</sup> O'Sullivan, Sheffrin, 2003.

<sup>191</sup> InvestorWords.

#### 4.2.1.2 The World Bank as a commercial bank

We will now examine the activities and structure of the World Bank and see if we can draw the conclusion that this institution is indeed a bank.

##### 4.2.1.2.1 *Lending activities*

As we have seen in the first chapter, the World Bank is concerned with promoting and nurturing development in its member States.<sup>192</sup>

The way it achieves this aim is by providing loans to its borrowing member countries. These member states apply for a project which they present to the Bank, and ask it to fund it.

So, just as any commercial Bank, the World Bank is concerned with lending money. The Loan and will be granted only if the Bank accepts it. To that end, it engages in an intensive dialogue with the borrowing member.<sup>193</sup>

Indeed, when the institutions started its operations, it was lending money *stricto sensu*. As Oliver puts it, the lending concept was “*comparable to a commercial enterprise, financing projects proposed by its clients*”.<sup>194</sup>

However, the Bank soon realized that the overall quality of a project depends also upon the technical expertise to craft the project, as well as a sound policy-making environment.<sup>195</sup> Therefore, and in addition to its lending activities, the Bank started getting involved into policy advice and technical assistance to its borrowing members.<sup>196</sup> It does this in particular by resorting to survey missions, and by contributing to project appraisal and implementation.<sup>197</sup>

Finally, the Bank helps its borrowing members who lack a satisfactory business environment, to attract capital and FDI through guarantees.<sup>198</sup>

So, just as any commercial bank, the World Bank makes loans but also a wider range of services such as advices and technical assistance. Contrary to commercial banks it

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<sup>192</sup> Articles of Agreement, Art. I, s. 1 and 3.

<sup>193</sup> World Bank Treasury, FY 2006, slides 2 and 5; World Bank 2007(a), p. 2.

<sup>194</sup> Oliver, 1996, p. 255.

<sup>195</sup> Gavin & Rodrik 1995, p. 332

<sup>196</sup> World Bank, 2007(a), pp. 11-12.

<sup>197</sup> Hughes 1999, p. 201

<sup>198</sup> World Bank, 2007(a), pp. 11-12, World Bank Website, guarantees.

doesn't receive deposit from its clients.

#### 4.2.1.2.2 *The voting structure*

The Bank's structure reveals that when it was build, it was thought of as a bank.

Indeed, the voting structure is the same as for any normal corporation: the number of votes is proportional to the number of shares (which itself is calculated according to a formula which reflects the country's economic strength in the world economy).<sup>199</sup>

Semantically, it is also interesting to note that member countries are called "shareholders" and that borrowing members are called clients.

#### 4.2.1.2.3 *Financial structure*

To become a World Bank's shareholder, a country needs to subscribe some capital;<sup>200</sup> however not all the subscribed capital is to be paid-in immediately, only a part of it has to be. The remaining capital, called callable capital is available upon the World Bank's request only to meet its obligations to its debt holders. So far this has never been the case. To have an idea, in fiscal year 2006, out of a US \$ 189.7 billions subscribed capital, only 11.5 constituted paid-in capital.<sup>201</sup>

Unlike other International Organisations, the World Bank's finances don't rely upon member's periodical contributions. As Kapur points out, the paid-in capital was only used at the beginning, to help jump-start the institution. Instead, the Bank borrows money on capital markets, first exclusively on Wall Street and later, on global financial markets.<sup>202</sup>

To that end it issues AAA-rated bonds on capital markets.<sup>203</sup>

The bond rating is an indication of the Bond's credit quality, that is, the bond issuer's ability to repay the bond's principal and interest in due time. AAA is the highest rating, meaning that the World Bank is a top financial institution.<sup>204</sup>

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<sup>199</sup> Woods, 2000, p. 9.

<sup>200</sup> Kapur, 2002, p. 61.

<sup>201</sup> World Bank Treasury, FY 2006, slide 10.

<sup>202</sup> See, Kapur, 2002, p. 61; Gilbert, Powell, Vines, 1999, p. 604.

<sup>203</sup> See, *inter alia*, Gilbert, Vines, 2000, p. 12.

<sup>204</sup> Investopedia.

The loans it provides to its clients are charged with interest rates that are slightly higher than those of the bonds it issues, thereby enabling it to make some profit.<sup>205</sup> Plus, and just as any other bank, it focuses on credit-worthiness of its borrowing members.<sup>206</sup> To that end it has rigorous loans criteria, a policy of freezing loan approvals and disbursements if a country fails to pay obligations on time, and a practice not to reschedule interest or principal payments on its loan as well as to never write off a loan.<sup>207</sup>

So, the capital structure of the Bank is really the same as for any corporation.

#### 4.2.1.2.4 *Financial products*

When looking at the World Bank Treasury webpage, one can only be impressed by the financial expertise it shows. It provides its clients with a wide range of services such as hedge funds and other derivative products, risk management products and other financial services. It also proposes to market investors a broad range of products in the capital markets: benchmark bonds, tailor-made bonds to suit specific investor needs, bonds in various currencies and maturities-sustainable investment opportunities.<sup>208</sup>

In that respect, the World Bank is just like any other bank active on stock exchanges; even, it is one of the most innovative, with a very high concentration of expertise.

#### 4.2.1.2.5 *Culture of loan approval*

As we have seen beforehand, the Bank is plagued by this so-called culture of loan approval (cf. *supra*, chapter II).

As a quick reminder, most of the Bank's staff is composed of economists who emphasise loan disbursement at the expense of the projects' qualities.<sup>209</sup>

This is coherent with the vision of the Bank as a for-profit institution, which on takes into account considerations of profit maximisation, without further wondering what

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<sup>205</sup> Gilbert, Powell, Vines, 1999, pp. 604-605.

<sup>206</sup> World Bank, 2007(a), p. 12.

<sup>207</sup> World Bank Treasury, FY 2006, slide 9.

<sup>208</sup> World Bank Treasury, FY 2008, p. 24.

<sup>209</sup> See, Kapur, 2002, p. 65; Rich, 2002, pp. 26-53.

the consequences a given loan has in terms of social and environmental consequences.

#### 4.2.1.2.6 *Goods and services it provides*

As we have seen before, at the time of its creation the institution was only concerned with development understood as economic growth (cf. *supra*, chapter I).

As a consequence, it was only providing loans for projects of an economical character, and in no way was it interested with market externalities. It therefore resembled very much any ordinary bank lending money to a State willing to invest it into economic projects.

#### 4.2.1.2.7 *Conclusion*

The conclusion we can make is that some of the World Bank's work is exactly the same as that of any other Bank. In that sense it is well a corporation. This assertion is further corroborated by the institution's structure, be it capital-wise, membership-wise, or staff-wise. Moreover, its operations, until a certain point at least, were concerned with purely economical products.

In the following part we will see that the World Bank is also, in some respects, a public institution.

### 4.2.2 **The World Bank a public institution**

This part will explore the reasons why the World Bank has also some aspects which reflect its character of a public institution.

First and foremost, as a classical global public institution it is owned by sovereign States.

Moreover, its borrowers can only be its shareholders, i.e. States. This means it's not owned by private individuals who would as Bank Executives sole concerns of profit maximization, but by States, which are supposed to have concerns of general interest.

Those States have a seat in the Executive Board, and thus a borrower can have a say in the Bank's decision whether to grant a loan,<sup>210</sup> although we have previously seen

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<sup>210</sup> World Bank, 2007(a), p. 13.

what are the constraints experienced by the Executive Board.

Another characteristic inducing that the Bank is a public institution is the fact that each State has a number (250) of basic votes (in addition to the votes representing its number of shares). These votes represent the commitment of making the institution a universal and public one; therefore putting the emphasis on the equality among member States. As Gold explains, “*weighted voting should be combined with the political consideration of the traditional equality of States in international law. The Basic votes were to serve the function of recognizing the doctrine of the equality of States. In addition, they were intended to avoid too close an adherence to the concept of a private business corporation.*”<sup>211</sup>

This clearly shows that it was in the Bank’s creators’ mind to see it as a dual entity, striving to achieve a balance between a corporate and business orientated approach, and considerations of equality, universality which are typical of a public institution.

Another public institution characteristic which we find at the World Bank is the fact that unlike other, “normal banks”, it is “*driven by development impact rather than by profit maximization*”. Moreover, its fundamental overarching goal is poverty alleviation and sustainable development.<sup>212</sup> This means that unlike normal businesses, who, as we have seen, are only profit-driven, the World Bank, although concerned with its assets and financial situation, is mainly trying to address poverty issues in its borrowing members. Indeed, one of the rationales for the Bank creation was to correct capital market imperfections, such as the volatility of capital or the fact that private investors are only concerned with profit increase and are therefore impermeable to issues of redistributive justice.<sup>213</sup> That is the reason why the Bank has intervened in the financial crisis in Mexico or in Asia, when no private investor would have wanted to spend money to help those countries recover from the financial turmoil.

This is what makes it a public institution: it is concerned with delivering a public good, i.e. development. And this goal takes precedence over profitability considerations.

This last assertion is even truer if one remember that Bank now interprets poverty and

<sup>211</sup> Gold, 1972, p. 18, I underline.

<sup>212</sup> World Bank, 2007(a), p. 13, Stern and Ferreira, 1997, p. 542. See also, *supra*, Chapter I.

<sup>213</sup> Gilbert, Powell, Vines, 1999, pp. 600-601.

development as holistic concepts which are not reducible to issues of economic poverty; but on the contrary have social, environmental and human dimensions.

So if it was possible to argue that at the beginning the Bank was providing a product which was essentially an economic one, and that if that were the case, it could only take economic and therefore profitability considerations into account; it is nowadays not possible anymore to contest the fact that it is providing a public good. And therefore, it is very difficult to contest that it is well a public institution.

Just as a reminder, the World Bank has endorsed the Millennium Development Goals, and as a consequence it is dealing with such issues as promote gender equality and empower women, combat HIV/AIDS, malaria and other diseases or achieve universal primary education.<sup>214</sup> Those are clearly public goods that are in no way reducible to sole market goods.

There is a last element to talk about and which hasn't been addressed yet.

This thesis is about the World Bank. However, determining what the World Bank is, is not as self-evident as it might appear.

First a distinction must be made between the World Bank and the World Bank Group. The World Bank Group is comprised of the International Finance Corporation (IFC), the International Center for Investment Disputes (ICSID) and the Multilateral Investment Guarantee Agency (MIGA) + the World Bank as such which is itself composed of the International Bank for Reconstruction and Development and the International Development Association (IDA).

The World Bank is constituted of the IBRD and IDA because they are the only institutions lending to States and thereby supporting public projects. The three others institutions deal only with the private sector, and are beyond the scope of the thesis.<sup>215</sup>

The World Bank divides its operations between the two institutions in the following manner: The IDA assists the world's poorest countries while the IBRD helps middle-income countries as well as poor countries who have managed to prove their credit-worthiness. Both institutions share the same headquarters and staff who report to the same senior management.<sup>216</sup>

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<sup>214</sup> World Bank, 2007(a), p. 3.

<sup>215</sup> *Ibidem*, p. 2. On the institutional history of the Bank, See footnote 9, and the references in Mac Darrow, 2003, pp. 11-14.

<sup>216</sup> World Bank, 2007(a), p. 11.

There are more differences between the two entities than just targeting different States.

The IDA was born in 1960 from the conclusion that some countries were so poor they weren't able to pay back the loans made by the IBRD, even with low interest rates.

Therefore, the IDA was established with the mission of providing the so-called "concessional loans" (also known as credits and grants), which are very advantageous loans since they have a maturity of up to 40 years, they feature a 10 years grace period before the repayment can be claimed and they have a zero percent interest rate.

This has consequences over the funding of the IDA: as we have seen above the IBRD borrows money on capital markets by issuing bonds and it repays its debts to its creditors with the money it gets back from the loans. However, it is very unlikely that an investor will buy bonds if it knows that it will have to wait at 10 years to start being repaid, and how will the Bank back the interest back since concessional loans are interest-free?

For those reasons, the IDA has a funding method which brings it closer to other International Organisations: it is funded by contributions of its shareholders/member States. Those funding are called replenishments and occur every three year.<sup>217</sup>

As we can see, the IDA is a much more classical public institution, giving grants and existing thank to States' contributions.

Nonetheless, we must not forget that its creators still viewed it as a bank, providing extremely generous loans and somewhat setting considerations of profit maximisation aside, but still a bank. As it self recognizes it was necessary to "*imbue IDA with the discipline of a Bank.*"<sup>218</sup> That is why it is part of the World Bank instead of being a stand-alone institution. As Mason and Asher put it, "*the distinction between IBRD and IDA is an elaborate fiction.*"<sup>219</sup>

The fact of having integrated the IDA within the World Bank reinforces the public institution aspect of the Bank.

#### 4.2.3 **Conclusions**

From what precedes it is very clear that the World Bank has indeed a dual nature,

<sup>217</sup> World Bank, 2007(a), pp. 17-20.

<sup>218</sup> *Ibidem*, p. 17.

<sup>219</sup> Mason and Asher, 1973, p. 980.

being both a bank/corporation and a public institution.

To summarize the main points, it is a bank/corporation because it lends money, and is thereby making profit out of its loans; and it is a public institution because it is making loans in the long-term goal of development understood as a comprehensive process which is supposed to contribute directly to poverty alleviation.

I would like to link this dual nature to CSR. Indeed, because of this dual nature, the Bank, when doing its business has to take non-business considerations into account

**In other words, this is a bank which includes non-business considerations in its decision to grant a loan. What this means is that this bank is integrating market externalities in its business, i.e. it is transforming market externalities into market internalities.**

As we will see later, CSR can be defined as a process whereby *companies integrate social and environmental concerns in their business*; meaning –as I will argue- that corporations internalize social and environmental concerns.

What this means, is that the World Bank because of its dual nature is doing precisely what CSR is meant for. Other companies don't do it because they are not dual, and as such, are only concerned with profit maximisation, and this is why CSR is required for them.

The only problem is that this is just the mandate of the Bank, and as such, it is internal to the institution which can interpret and enact it as it wants. That is the reasons why we should turn towards external standards and market sanctions.

For that purpose, the next section will be dealing with the concept of market and will show whether the World Bank is operating on a market.

### **4.3 The Market**

So far we've seen that the World Bank has a dual nature entailing that CSR, as a regulatory mechanism, can validly be used; and that it is already promoting the goals

for which CSR instruments have been created.

This section will focus on the market, which is the space within which CSR can be purported.

After giving a definition of what a market is, we will see that much of development aid can be thought of in terms of demand and supply, with States demanding aid for projects to development banks. We will see that this market features a blur between the public and the private sphere since there are also some private Banks and money providers involved in this business. Finally we shall see that this vision is coherent with what has been observed about globalisation and global governance.

#### 4.3.1 **What is the market?**

A market can be defined as the place where “*buyers and sellers come together voluntarily to decide on what products to produce and sell and buy*,”<sup>220</sup> or, “*the world of commercial activity where goods and services are bought and sold*.”<sup>221</sup>

Let’s now take the elements of the market definition and see if these can be found at development level. If that were to be the case, it would mean that development aid, can be thought of as being a market.

1. Goods and Services: The good which is produced here is aid for development. It is a service: it is the money lent to finance projects which are supposed to nurture development.
2. Buyers: in this case it is the borrowing States which need the service, i.e., money for development purposes.
3. Sellers: it is the World Bank, but not only, other regional development Bank or private capital suppliers also enter in that category.

As a conclusion, we can say that development aid can be framed in terms of market,

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<sup>220</sup> Canadian government website.

<sup>221</sup> Wordnet.

i.e. of demand and supply over a determined service.

#### 4.3.2 **Different existing Sellers**

There are different types of sellers. There are some public ones such as States or international institutions, but also some privates such as corporations.

The Development Assistance Committee (DAC) is the OECD body officially dealing with development, and it is entrusted, among other things, to determine the relevant institutions and instruments in the field of development.<sup>222</sup>

It operates a main dichotomy between the different flows of capital raised for development purposes: public or official flows and private flows.

##### 4.3.2.1 Public

###### 4.3.2.1.1 *Which forms of aid*

Public institutions can promote development through many ways.

For example, they can provide developing countries with what is referred to as Official Development Aid (ODA). ODA encompasses all the money which is especially transferred to countries for development projects. It is seen as a real “aid”, meaning that at least 25% of the amount must be a grant, and the rest has to be concessional (i.e. without interests).

However, public institutions can also resort to other flows of capital, known as Other Official Flows (OOF). This category includes all the aid which does not qualify as ODA, for examples loans or debt reorganisation.<sup>223</sup>

###### 4.3.2.1.2 *Which public institutions*

The public institutions involved in development aid can be of many kinds.

The most obvious ones are States, who are represented by their development agencies. However, public institutions can also be international ones such as the European

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<sup>222</sup> DAC homepage.

<sup>223</sup> International Development Statistics (IDS) online databases on aid and other resource flows.

Union, the UNDP or the World Bank (IBRD + IDA).

Among International institutions concerned with development we can proceed to a classification.

First, there are the so-called Multilateral Development Banks (MDB's).

This category includes the World Bank which is a global MDB, and other regional Banks. Namely, the African Development Bank, the Asian Development Bank, the European Bank for Reconstruction and Development, and the Inter-American Development Bank Group, are only regional in scope.

They have two main characteristics.

First, and as their name suggests, they make loans to countries, meaning that they don't provide ODA, but OOF's. Secondly, they have a broad membership which includes both borrowing developing countries and developed donor countries, and, in the case of regional banks, this membership is not limited to member countries from the region of where the bank operates.

There are also sub-regional banks, which only operate within the territories of its members, and who are, in general, only owned by developing countries.

Finally, there are also Multilateral Financial Institutions (MFI's), which are not Banks (and thus who can resort to both ODA and OOF, depending on the institutions), and whose membership is usually narrower. This would include the European Union, the International Fund for Agricultural Development (IFAD), or the Nordic Development Fund (NDF).<sup>224</sup>

Here again, the dual nature of public institutions involved in development is visible: although being international organisation created and owned by sovereign States, they resort to lending and are thus in a mitigated profit-making logic. This is the case for MDB's of course but also for MFI's and official agencies when they resort to OOF, because they enter an economical logic whereby they don't give money, but make loans, therefore making profit.

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<sup>224</sup> World Bank website, "about us"

#### 4.3.2.2 Private

The private sector has not remained still, and has increasingly provided flows of money to developing States.

The UN has at several occasions put the emphasis on the private sector as an essential contributor for development. The most important occasion where it has repeated this, was at the 2002 Monterrey conference on “financing for development”.

According to this conference and to the report of the conference made by the UN Secretary General, there are 3 main sources of private capital for aid.

First, Foreign Direct Investment (FDI), which is, **according to the UN**, very important for financing sustained economic growth, which in turn is supposed to foster development.<sup>225</sup>

It is, the UN argues, especially important for “*its potential to transfer technology, create jobs, boost overall productivity, enhance competitiveness and entrepreneurship, and ultimately, eradicate poverty through economic growth and development.*”<sup>226</sup>

Another source of private capital flows are financial markets, where States can issue equities or bonds in order to finance development projects. Indeed, with the liberalisation and globalisation of financial markets, capital is becoming accessible to everybody. Access to capital markets however, requires a sound financial and economic system and management which not all countries possess.

Finally, States can also resort to commercial banks and ask for loans.<sup>227</sup> As is the case with financial markets, economic globalisation has enabled banks to operate worldwide. Therefore, their capital is available to most developing States.

DAC says nothing else when it counts among private flows of money transaction undertaken by residents of DAC member countries (= FDI), portfolio investments (which the OECD defines as equity and bonds), and export credits which is credit lending by banks.<sup>228</sup>

Corporations have thus far contributed to development either through loans (in the

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<sup>225</sup> UN, 2004, p. 11.

<sup>226</sup> UN, 2003, p. 9.

<sup>227</sup> UN, 2004, p. 11.

<sup>228</sup> DAC webpage.

case of Banks), either through FDI.

However, in recent years corporations have also started contributing to development in a new way.

In recent years a new trend has emerged, which sees an increasing number of corporations directly investing in critical areas of development, such as basic health, education, or the environment. For example, corporations finance the construction of schools or dispensaries.

Such social spending is quite new, and corporations don't keep track of the data yet.

It is part of Corporate Social Responsibility strategies, and is known as Corporate Social Investment (CSI).

Still marginal a few years ago, CSI is becoming more and more mainstream. A study made by the Canadian Foundation for the Americas, has shown that in 2006, 60% of canadian enterprises were engaged in some form of CSI.

The same study shows that this form of corporate development assistance is taking an ever increasing place in the total amount of aid provided by Canada.<sup>229</sup>

Apart from corporations, there are other private bodies funding development: NGO's. Indeed, NGO's have been active actors in the field of development for years, either transferring money,<sup>230</sup> either directly delivering aid.<sup>231</sup>

A study by the World Bank shows that the importance of NGO's as development suppliers has kept on growing throughout years.

Their funding especially, has risen in quite an impressive way. Indeed, if States contributions have remained steady, there has been on the other hand an impressive increase of private contributions to NGO's in the last years. Those private contributions emanate mostly from private foundations which prefer to invest their money in NGO's, whose expertise in development delivery is widely acknowledged, rather than directly giving money to the States concerned.<sup>232</sup>

Although data is very difficult to collect since those foundations release very little information, the trend is clearly going upwards. For example, the Bill and Melinda Gates foundation has disbursed in 2007 nearly \$2.8 billion. This is huge!<sup>233</sup>

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<sup>229</sup> Dade, 2006, pp. 7-9.

<sup>230</sup> Pincus & Winters, 2002, p. 7.

<sup>231</sup> World Bank, 2007(b), p. 57.

<sup>232</sup> *Ibidem*, p. 58.

<sup>233</sup> Brainard, 2006.

In addition to that, DAC statistics show a steady progression in the amount of money granted by NGO's to countries.<sup>234</sup>

As we can see, NGO's have become an increasingly important actor in the development business.

Finally, I shall quickly mention remittances, which are, *stricto sensu*, not part of the money used for reaching the MDG's goals, and as such, are beyond our topic. However, it is important to mention them because they are a crucial source of income for many struggling families, and as such, ensure them a better standard of living.<sup>235</sup>

#### 4.3.2.3 Conclusion

As we can see, there are many different suppliers of aid for development, namely: States, International Organisations, corporations (Banks, CSI strategies), financial market and investors, and NGO's. I exclude voluntarily FDI and remittances, because although they have an role which is far from being neglectful, they only contribute to development in an indirect way, and as such they cannot be considered as proper suppliers of development aid.

#### 4.3.3 Competing actors

In the previous header I have outlined that development aid can be framed as a market. This market features a service ( development aid), a community of buyers (all States resorting to development aid) and suppliers ( public and private actors).

So, and just as for any market, these suppliers enter into competition in order to get as many market shares as possible.

This is especially true for the World Bank and other MDB's, since we have seen that their incomes derives from their lending activities. In other words, the more loans the World Bank makes, the wealthier it will get. In order to achieve that, it has to remain competitive and propose the most attractive loans (this is also true to a lesser extent for other public institutions when they resort to OOF).

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<sup>234</sup> DAC, 2009, table 02.

<sup>235</sup> See for example, World Bank, 2007(b), World Bank, 2005(b).

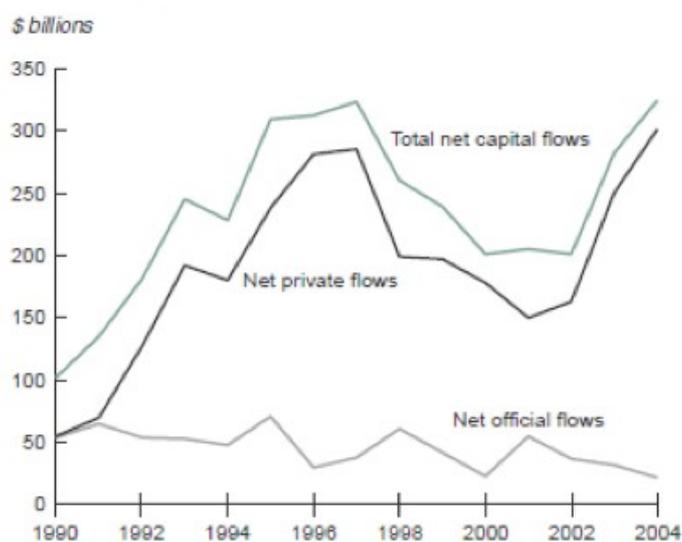
However, recent figures of development aid are not favourable to MDB's and public capitals in general, to say the least.

Indeed, private capitals have started financing development in the beginning of the 1990's, as the cold war was ending. It was believed at some point that official lending from public structures was necessary, in order to create the adequate infrastructures for development, which would in turn stimulate private investment. However, the post-cold war globalisation of the economy and the following internationalisation of markets, and especially capital markets, has proven that this was not necessarily true.<sup>236</sup>

Since that time, private capital flows have kept on rising and official flows, especially from the World Bank have kept on diminishing.

Here is what a recent figure shows.

**Figure 1.1 Financial flows to developing countries, 1990–2004**



This graph depicts the situation as in 2004 and it is crystal clear: since private capital flows have started financing development, their importance has kept on rising.<sup>237</sup> This has led many authors to conclude that the World Bank was being marginalized, and that its role as a lending Bank was redundant. The

same authors concluded therefore that it should transform into a “knowledge bank”, that is, a bank selling the expertise over development it has acquired in more than 50 years of practice.<sup>238</sup>

More recent figures go in the same direction, underlining an increase in private capital

<sup>236</sup> Pincus & Winters, 2002, p. 6.

<sup>237</sup> World Bank, 2005(b), p. 14.

<sup>238</sup> See, *inter alia*, Meltzer *et al.*, 2000; Gilbert, Powell and Vines, 1999.

flow, and a decrease, or at least a stagnation in official flows.<sup>239</sup>

Of course, it is clear that there are many factors influencing the trends in development aid; among which, political factors and loan strategies conceived by the World Bank. The latter is -I shall recall- heavily influenced by the United States.

However, my aim is not to determine all the relevant factors influencing and shaping the trends among suppliers of aid, but merely to show that development can be thought of as being a market, with different suppliers; each one competing with the other. For example, many countries don't appreciate at all the Bank's conditionalities, finding them way too intrusive in their internal affairs. On the other hand, they certainly appreciate the fact that the Bank is not only profit driven, but also development driven; which is the reason why it makes loans at the lowest interest rates possible and gives money to States which are in a delicate financial position and whose ability to quickly repay the loan is far from being assured.

As a conclusion, we can say that development aid can be thought of as a market, where different suppliers of aid compete with each other. This competition is crucial for the World Bank since it is financed by its lending activities. This means that in order to have some financial stability, it must keep up a certain lending pace. But if its market shares are falling too much, it will face serious problems. And of course, I argue that the most efficient means of preserving its position on the market is to provide good quality services; in this case, endorsing projects which fulfil and live up to the expectations of their goals of poverty alleviation and sustainable development.

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<sup>239</sup> See, *inter alia*, World Bank, 2007(b), p. 40.

## **4.4 Characteristics of the development market**

### **4.4.1 Introduction**

Thus far, we have seen that development can be framed as a market and that within this market there are aid suppliers competing between each other.

This last section will focus on the characteristics of this market. Indeed, if it is true that development aid corresponds, or can be thought of as corresponding, to the definition of a market, it is nonetheless a peculiar market with distinctive characteristics.

What makes this market so special is the fact that it is deeply embedded within globalisation (especially economic globalisation).

Before starting this part, I would like to acknowledge that theories over globalisation and global governance are multiple, and as far as today, none has really managed to come up convincingly with this ongoing phenomenon. My aim however, is not to provide an exhaustive analysis of what globalisation is and how it affects the world, but merely, to sketch the frame wherein the picture development aid market lies.

Indeed, let's have a closer look at development aid, and let's ask ourselves the question of who are the actors concerned?

Development involves public institutions, which are domestic or international such as States or International Organisations. Private for-profit institutions such as corporations, financial markets and investors also participate in the process. Finally, private, non-profit motivated individuals are also involved since they are the real recipients of aid; and also because they are also involved in aid, be it through remittances or NGO's financial contributions.

### **4.4.2 Globalisation**

The picture we get is of something deeply embedded within globalisation, understood as the always increasing interconnectedness and interdependence between all people

from all parts of the worlds (cf. McLuhan and the notion of global village).<sup>240</sup>

Globalisation is mainly referred to as economic globalisation, meaning that this further integration of the world is happening first and foremost at the economic level. Globalisation is thus often understood as the process of internationalisation of economic activities, characterized by the liberalisation of capital markets which ensures the free flow of capitals around the globe. Correlatively, trade barriers have been -and still are- progressively abolished. Finally, all this has been possible through advances in technology, and especially technology of communication.<sup>241</sup>

#### 4.4.3 A transnational/global space

What characterizes this process of globalisation is that it challenges the classical Westphalian paradigm of independent Nation States which views the international sphere as a space concerned with the regulation of inter-States conducts. Indeed, it is now widely acknowledged that globalisation is transnational, suggesting that we are shifting from a State centred system to a global post-national space; meaning that it is not possible to understand the logic of the system in terms of inter-States relations.<sup>242</sup>

In other words, globalisation has come up with a transnational space, which is –as its name suggests- characterized by a multiplicity of actors other than States: International Organisations, individuals, groups, movements, businesses, and so on.<sup>243</sup> States are thus just one of many actors, and this implies that the role of the State has changed. The views on the extent of this change might be different, with some arguing that States have become the last resort solution in the event of a collapse of global markets, whilst others argue that we are assisting to a withering of the States. What is clear anyhow is that there is a consensus over the fact that the role of the State is changing and that it is becoming one global player among many others.<sup>244</sup>

And all those actors are interacting, pursuing different kinds of activities within this space; although mainly economic ones according to the dominant paradigm of globalisation which views it first and foremost as an economic process.

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<sup>240</sup> See, McLuhan Marshall, *“War and Peace in the global village”*, New York: Bentam Books, 1968.

<sup>241</sup> Pikalo, 2007, p. 21 and the references, especially Fn. 19, 20 & 21; Frydman, 2008, p. 6.

<sup>242</sup> Djelic and Quack, 2003, p. 5.

<sup>243</sup> Hannerz, 1996, p. 6.

<sup>244</sup> Biersteker & Hall, 2001, pp. 7-8 and 16-17.

As we have just seen, economic globalisation is evolving within a global/transnational space. This space features a blur between private/public and domestic/international boundaries, and it cannot be reduced to a simple juxtaposition of the domestic and the international ones.<sup>245</sup> As Djelic puts it, in this global space “*it becomes increasingly difficult to separate what takes place across and beyond nations*”.<sup>246</sup>

Just as the phenomenal world, this transnational space needs to be interpreted. Of course, different interpretations concur. Some see it as the *locus* of administrative action;<sup>247</sup> others frame it as a global marketplace that is, as an anomic and apolitical sphere, leaving free play to market, financial and economic logics.<sup>248</sup>

#### 4.4.4 **A need to be regulated**

Nonetheless, what is true is that it is a space where interactions between different actors occur, and as such they need to be regulated.

If this is self-evident for a global administrative space, it is also true for a global market. As Ost has shown, all markets need some regulation and rely to some extent on States’ binding powers. According to him, this is not only true for domestic markets, but also for the global market featured by economic globalisation.<sup>249</sup>

This view is quite consistent with the observation that all human activities need some sort of regulation, including market-based activities.<sup>250</sup>

One could even argue that markets are the institutionalized space of economic transactions, and that being embedded within institutions they are (or at least should be) *ipso facto* regulated.<sup>251</sup>

In other words, markets need to be regulated, and this task is entrusted to institutions. But which institutions are competent to regulate this transnational/global market?

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<sup>245</sup> Kingsbury, Krisch, Stewart, 2004, p. 12.

<sup>246</sup> Djelic & Sahlin-Andersson, 2006, p. 6.

<sup>247</sup> See Kingsbury, Krisch, Stewart, 2004, p. 13, and in general all the Global Administrative law movement: <http://iij.org/GAL/>.

<sup>248</sup> Djelic and Quack, 2003, p. 2.

<sup>249</sup> Ost, 2001, p. 10.

<sup>250</sup> See, Wittgenstein, and the need for norms, see for example, Wittgenstein, Dastur, Rigal, 2005.

<sup>251</sup> Fligstein, 2001 in Djelic & Quarck, 2007, p. 3.

#### 4.4.5 The regulatory framework

What results from this, is that this space needs to be regulated. Quite logically a transnational space needs transnational regulation, which is also referred to as global governance.<sup>252</sup>

##### 4.4.5.1 Which actors?

This transnational governance has the same features as the transnational space: it is not solely composed States. As Djelic puts it, global governance is “*pursued by a constellation of public and private actors that include States, International Organisations, professional associations, expert groups, civil society groups and business corporations.*”<sup>253</sup>

Kingsbury *et al.* have identified different governance actors. These includes States, International Organisations, individuals (or associations of individuals such as NGO’s or Multinational Corporations), but also *hybrid intergovernmental-private bodies* which are semi-public semi-private bodies, as well as purely private bodies such as the International Standardization Organization (ISO) or Social Accountability International (SAI).<sup>254</sup>

This is what has led Roseneau and Czempiel to talk about “governance without government”: global governance involves a multiplicity of actors trying to regulate this global space.<sup>255</sup>

To quote Djelic again, “*the defining characteristic of “post-regulatory State” thinking is a blurring of the distinction between public and private actors, States and Markets.*”<sup>256</sup>

Thus, we find ourselves with a regulatory framework which relies upon a post-national paradigm. As Biersteker *et al.* have shown more and more private actors are playing the roles of regulators. For example, Sassen points out that States and State-based structures are stepping aside in the battle for regulating the global space,

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<sup>252</sup> Cf. *Infra*, Keohane, 2002, p. 3. There is an impressive number of publications over global governance. Amongst all this literature, see *Richards, & Smith, 2000; Kjaer, 2004.*

<sup>253</sup> Djelic & Sahlin-Andersson, 2006, p. 9

<sup>254</sup> Kingsbury, Krisch, Stewart, 2004, p. 9.

<sup>255</sup> See, Rosenau & Czempiel, 1992.

<sup>256</sup> Djelic & Sahlin-Andersson, 2006, p. 13.

leaving the room to private actors such as audit cabinets, accountancy firms, NGO's or private norm producers. "*The economic globalisation and the privatisation of economic processes have shifted regulatory functions from the public to the private sphere*".<sup>257</sup>

#### 4.4.5.2 Post-State framework: institutional consequences

Regulation at national level, -i.e. within traditional systems of government- takes place within the State framework which is characterised by a command and control environment, meaning that the State has binding powers to enforce the law.

However, the situation is quite different once we turn to global governance. Indeed, such a command and control environment does not exist. This means that global regulators have no power to enforce their law.<sup>258</sup>

One of the elements of the equation is that traditional governments enjoy a monopolistic situation, whereas governance rests upon multiple authorities that are not necessarily public.

The main difference between traditional governments and new, global authorities, is that the former resort to hard law, whilst the latter have no other choice than issuing so-called soft law, that is, a law deprived of any classical sanction mechanism and thus formally not binding.

In other words, global governance can be said to be characterised by "*horizontal networks and authority relationships defined by flexibility and voluntary rules.*"<sup>259</sup>

As a conclusion, we can say that global governance features a dispersed power and authority structure: States are not the only regulators anymore. They must share this

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<sup>257</sup> Sasse, in Biersteker and Hall, 2001, p. 9.

<sup>258</sup> *Mörth, 2004*, p. 3.

<sup>259</sup> *Ibidem*, 2004, p. 4.

It is said to be voluntary in the sense that it is not binding. For a strong critique of soft law and the deformalization of international law in general, see Klabbers, 2005; Koskenniemi 2007; Koskenniemi 2009.

power with the aforementioned actors. This dispersed power entails an absence of enforcement power, hence soft, deformed law.

#### 4.4.6 **CSR: a deformed instrument of international law?**

Corporate Social Responsibility is one of these various forms of soft law, as will now be shown.

We will now have a look at different instruments of CSR and see that they are indeed produced by different actors.

For example, if we take Codes of conducts, some are developed at corporation level and are thus purely internal. Others however, so-called multi-stakeholder codes are developed by several actors. This is the case for example, of the Ethical Trading initiative, which is a UK-based alliance of companies, trade unions and NGO's.<sup>260</sup>

This is even truer in the case of so-called "management standards". These are internal tools designed for companies and which help them to work in socially responsible daily basis.<sup>261</sup> In this case, the main suppliers of management standards are private bodies such as SAI or ISO. Their task is to set up norms that companies will integrate in their practices. That is why they are referred to as standard setting bodies, because these institutions of normalisation set norms which are called to become standards in given fields of business running.<sup>262</sup> Many norms and standards have been produced, such as SA 8000 on labour conditions, ISO 9000 on good management practices, AA 1000 on accountability or environment issues.<sup>263</sup>

Finally, this is also the case for labels, which are mainly produced by NGO's. One of the most famous examples is the Fair-trade Labelling Organisations (FLO). It is an international body comprised of 17 national bodies, and which *-inter alia*, coordinates the action of national fair trade NGO's and monitors respect for its labels. Such labels as Max Havelaar are part of FLO.<sup>264</sup>

The list of examples could go on and on...

As we see, it is quite clear that CSR is well a soft, deformed, legal instrument.

<sup>260</sup> European Commission, 2004, p. 13.

<sup>261</sup> *Ibidem*, p. 15.

<sup>262</sup> See, the website of some of these bodies, e.g. [www.iso.org](http://www.iso.org) or [www.sa-intl.org/](http://www.sa-intl.org/).

<sup>263</sup> European Commission, 2004, pp. 17-24.

<sup>264</sup> *Ibidem*, p. 41.

#### 4.4.7 **Conclusions**

What can I conclude from what precedes?

First of all, the World Bank as an international organisation at the heart of the international financial system and as crucial actor in the field of development is clearly an very big player of globalisation and global governance.

On the other hand, globalisation needs to be regulated. This is done through the use of deformalized instruments (also known as soft law).

As far as Corporate Social Responsibility is concerned, it is a soft law instrument whose main target are corporations.<sup>265</sup> And since corporations operate on markets, CSR can trigger market sanctions in order to provide some enforcement for the standards it has issued.<sup>266</sup>

In addition to that, we have seen that the transnational space resulting from globalisation can be interpreted as a global marketplace, and that development can also be thought of as a market. It is a specific global market within a bigger global market, and as such it can be regulated with the same deformalized instruments.

**Therefore the World Bank as an actor of the development market can be regulated through the use of CSR. In this case, this regulation aims at increasing the accountability of the institution. It will do so through the setting of standards and through the recourse to market sanctions.**

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<sup>265</sup> Corporate Social Responsibility aims at nurturing “responsible business conduct”, “corporate citizenship”, or “business ethics”, *See* Marrella, 2007, p. 289

<sup>266</sup> For example, Marrella identifies 9 market-driven forces which can drive CSR, Marrella, 2007, p. 298. This is also consistent with the fact of viewing the global/transnational space as a global marketplace, cf. *Supra*.

## **Chapter V: The Power of CSR**<sup>267</sup>

In this last chapter I will come back to our initial hypothesis which is an advocacy for joint legal/market accountability, through the use of CSR mechanisms. To that end, I will show how and why CSR is effective in achieving this goal.

I shall acknowledged that I don't consider at all CSR as the panacea, and that it is not self-evident that the market sanctions which I have identified below are fully effective. Rather, I consider CSR as an ongoing process just as is the case with globalisation. Because this is what this thesis is about: trying to render globalisation and, in particular, one global institution a bit more democratic. Once again, this thesis has chosen a pragmatic perspective, and in that sense it explores the potentialities of a set of tools which is in the making.

### **5.1 The rationale of a joint legal/market accountability mechanism**

As a reminder, I have concluded the previous chapter by saying that the accountability mechanisms currently in place at the World Bank were bound to fail for three reasons. First, the institution has implemented accountability mechanisms that rely upon an analogy with domestic mechanisms. The reason why this analogy is not successful at the global level is two-folded: the lack of a well defined constituency and the internalisation of the mechanisms. On the other hand, no effective sanction mechanisms exist. Finally, the existence of a so-called culture of loan approval undermines all the efforts undertaken to make the Bank more accountable.

In order to tackle these problems I have suggested resorting to a joint legal/market accountability mechanism.

Indeed, since there is no well defined constituency which can determine when the World Bank is committing an abuse of power (and needs to be sanctioned for that), I

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<sup>267</sup> There is a vast amount of literature dedicated to CSR. See, *Crane, McWilliams, Matten, Moon & Siegel, 2008; Mares, 2004; Steinhardt, 2005*.

have advocated using a legal accountability system; that is, referring to formal, pre-existing standards which constitute the legitimacy threshold. These standards I have said, must follow a sustainable development approach (and thus be derived from the most widely agreed upon instruments).

However, legal accountability entails a sanction mechanism.

To that end, I have suggested using the market (or more precisely, market actors). Indeed, the market is a place of competition between different actors, which can, and out-competed actors are sanctioned in terms of market shares and profit making.

In other words, markets would sanction the World Bank for failing to respect sustainable development standards!

This would also address the culture of approval issue since the Bank staff would realize that what is instrumental in winning market shares is not quick disbursement, but rather, financing projects that work. It would thereby change the structure of incentives currently in place at the Bank.

This solution seems workable. The only problem is that markets obey to their own, inner logic; that is, profit maximisation. They are populated by corporations who are solely profit-driven. Of course, sustainable development is a holistic process which includes concerns such as the empowerment of the poor or the respect of the environment. The latter represent additional concerns that businesses should take into consideration and which might mitigate the optimisation of their profits. In that sense, human rights are market externalities.

Hence the question: how can the market sanction the violation of values it's not concerned with?

The answer is Corporate Social Responsibility. Indeed, CSR can be defined as "*A concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basis.*"<sup>268</sup>

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<sup>268</sup> European Commission, Directorate General for Enterprise and Industry, I underline. See also the European Commission 2001 green paper. The definition talks about a voluntary basis because it aims to underline the fact that, CSR is a soft law instrument, and that as such, it is not legally binding.

This definition shows that the aim of CSR is precisely to push corporations to integrate new concerns into their businesses, thereby not solely focusing on strict profitability concerns anymore. There is thus clearly an internalisation of social and environmental concerns.

Since businesses take these concerns as a parameter, it means that they become a market issue to which market actors (consumers and investors) will pay attention.

Therefore, they become part of the market's inner logic, and the latter can play its role of sanction provider.

As a conclusion, we see that this *sui generis* accountability system is very promising: it sets a standard of legitimacy, and it provides us with a sanction in the event of violations of the aforementioned standards.

Of course, I have argued for a sustainable approach to development, and this means that new tools of CSR adapted to the specificities of sustainable development should be crafted, or that existing instruments should be adapted. However, this substantial discussion is beyond the reach of my thesis.

## **5.2 Replacing legal/market accountability in the framework of the very concept**

In shifting from a democratic/supervisory accountability mechanism to a legal/market one, we operate a change as to whom or what determines what is constitutive of an abuse of power. In the first case it is up to the constituency to determine that the government has abused the power it has been delegated. In the second case, it is by asserting that the power wielder has violated the standards he had promised to abide by. In other words, the legitimacy threshold has changed.

This however, has no influence on the accountability concept as such, which is three-folded as we have seen before.

To make myself clearer I will use a scheme.

### **Supervisory accountability:**

- Legitimacy threshold = constituency
- +
- 3 constitutive elements= Transparency, monitoring, sanction.

### **Legal accountability:**

- Legitimacy threshold = Formal, pre-existing standards
- +
- 3 constitutive elements= Transparency, monitoring, sanction.

What we notice is that the solution that I propose focuses mainly on two things: finding a “legitimate legitimacy threshold” and finding a way to enact sanctions. The logical corollary is that the two remaining constitutive elements (transparency and monitoring/control) don’t enjoy the same attention.

However, I will now provide reasons why an approach on accountability leaving over some elements of the concept is still legitimate and effective.

#### **5.2.1 An acknowledged bias**

Given the constraint of this Master's thesis, I have voluntarily decided to focus upon what I have retained to be the most important shortcomings: the culture of loan approval, the lack of a well defined constituency and the lack of an effective sanction mechanism.

#### **5.2.2 Core Content**

First of all, such an approach is consistent with the core content of the concept. In effect we have seen that accountability can be embodied within this expression: it is an “ex-post mechanism”. In other words, it is not a preventive mechanism. Neither can it be confused with a concept such as answerability, which requires the wrongdoer only to justify himself. Instead, accountability is a remedial process, meaning that if a power wielder abuses its power, it must be sanctioned. Therefore, what characterizes accountability and makes it unique, is the fact that it is a concept whereby someone who has acted in a wrongful manner will be sanctioned *a posteriori*.<sup>269</sup>

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<sup>269</sup> Goetz and Jenkins, 2002, p. 8.

### 5.2.3 **Sui generis solution**

Shifting from classical supervisory/democratic accountability to this *sui generis* model brings us to the following argument: if I advocate for a shift from democratic/supervisory accountability to joint legal/market accountability it is because we have seen that accountability is a concept fundamentally rooted within (domestic) democracy. However, concentrating on the World Bank means working at the global level, and we have seen that this move from the domestic to the global level entails that all analogies with domestic mechanisms are bound to be constrained. We also know that globalisation and global governance are processes in the making. Therefore, “*the point is not to design a comprehensive, ideal accountability system but, rather, to figure out how to limit abuses of power in a world with a wide variety of power wielders and without a centralised government.*”<sup>270</sup> Hence, what we need are “*more intelligently designed accountability systems that are sensitive to the variety of possible mechanisms of constraint and to the shortcomings of existing accountability mechanisms.*”<sup>271</sup> In other words, we must strive to find tailor-made solutions that fit best to the reality of a given global player knowing that this very reality is in the making and that it has important repercussions in terms of institutions, and democracy in general. This is what I am trying to do.

The question I am asking here is the following: accountability understood as a three folded concept is firmly rooted within democracy. Therefore, we could argue that such a three-folded concept is a particular expression of the very concept, and this expression is institutionally biased. In other words, this is an institutionally-embedded expression of the concept. Nonetheless, if we change the institutional context, the core content of the concept (sanctioning the wrongdoer) might express itself in different ways.

That is why I am proposing an accountability concept which borrows from the domestic typology but which is adapted to a globalised environment.

In that sense this accountability mechanism is institutionally adapted to the logic of the market: actors who don't perform well enough are out-competed and thus economically sanctioned.

### 5.2.4 **Markets need to be regulated**

But even if markets have their own sanctioning logic, it doesn't obliterate the fact that all markets need to be regulated, including global markets. A constant request from markets is greater transparency. We have also seen that global markets are regulated through soft law instruments.

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<sup>270</sup> Grant and Kehoane, 2005, p. 41.

<sup>271</sup> *Ibidem*.

Some of these deformalized instruments regulate global markets in order to bring more transparency and control. For example, transparency is assured by non-financial reports.<sup>272</sup> Equally, control is assured through audits carried out by independent firms, which work in the respect of CSR tools which set audit standards (e.g. AA1000 Assurance Standard, or ISAE3000).<sup>273</sup>

What we see is that market regulation can bring the other constitutive elements of accountability, which sanction mechanisms can later build upon.

So even though the accountability mechanism I am advocating for is not primarily concerned with transparency and control, it doesn't mean they're absent from the broader framework this mechanism is supposed to be working in. This is coherent with the fact that the three accountability elements build upon each other, i.e., effective control requires transparency and effective sanction requires control. So the market can be effective in sanctioning firms (or the World Bank in our case) because there are some market regulations requiring transparency and control.

#### 5.2.5 **Internal mechanisms**

I would like to make a last point. As we have seen, the World Bank has developed horizontal accountability mechanisms which are pretty sophisticated. One of the problems is that they are purely internal. However, if markets are to provide external sanctions, then they introduce some “externality” in those mechanisms. The mechanisms of transparency and control are internal but the sanction is external. This is an incentive to make them work more efficiently. This is quite analogical to what exist at State level, in the sense that horizontal mechanisms are also internal but they can relate to the constituency who will provide an external sanction.

In the following sections I will undertake a review of the different instruments of Corporate Social Responsibility which can put in place the accountability system. That is, through the setting of set standards and the triggering of market sanctions.

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<sup>272</sup> Hennebel, Lewkowicz, undated, p. 29. This article has been sent for publication to the Stanford Law Review. It is an actualized version of some chapters of the following book: *Berns, Docquir, Frydman, Hennebel, Lewkowicz, 2007.*

<sup>273</sup> *Ibidem*, undated, p. 27.

### 5.3 Standard Setting

Setting standards that companies have to respect is the task of codes of conducts. A code of conduct can be defined as a “*formal statement of principles, defining standards for specific company behaviour*”.<sup>274</sup> In other words, a code of conduct set the standards that a corporation agrees to respect.<sup>275</sup>

There are various kinds of codes. Some of them (so-called “company codes”) are purely internal, as they are adopted unilaterally by corporations. I am not interested in those ones since they are internal. However, there are other codes that are effectively the product of global governance, in the sense that they are adopted by a variety of different actors.

Indeed, there are sectoral codes, which are developed by a group of companies in a particular industry. There are also the so-called multi-stakeholder codes, which are the result of joint initiatives involving corporations, trade-unions, NGO’s, and all other stakeholders who have a legitimate claim to participate in the process (e.g. the Ethical trading initiative).

Finally, there are codes purely external to companies, and which have been developed by NGO’s (e.g. Amnesty International human rights principles for companies) or International organisations (e.g. The UN Global Compact, the ILO Tripartite declaration of principles concerning multinational enterprises and social policy, or the OECD Guidelines for multinational enterprises).<sup>276</sup> It is useful to remind that codes emanating from International Organisations are endorsed by governments.<sup>277</sup>

As we see, Codes of conduct are tools adopted by a variety of actors. Of course, the most legitimate ones are those which are external to the companies, because they avoid “the criticism of internality”. Another legitimacy factor resides in the standards these codes refer to. Indeed, the Global Compact and ILO Tripartite declaration directly refer to the Universal Declaration of Human Rights and to other widely ratified instruments.<sup>278</sup>

Finally, their legitimacy will also depend upon who is the authority issuing the code. For example, the Global Compact has a very strong authority; as is the case for the Amnesty principles.

The conclusion we can draw is that it is totally feasible to think about a code of conduct for the development market. Ideally, this code should be sectoral and multi-stakeholder at the same time. This is logical since apart from the World Bank and MDB’s, the other actors involved in the development aid market are States, NGOs, corporations etc... In other words, this is a market run by

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<sup>274</sup> European Commission, 2004, p. 7.

<sup>275</sup> *Ibidem*, p. 8.

<sup>276</sup> *Ibidem*. On the Global Compact, See Baker, 2006.

<sup>277</sup> OECD & ILO, 2008, p. 8.

<sup>278</sup> Hennebel, Lewkowicz, undated, pp. 8-9;

a wide variety of different stakeholders. It should also refer to widely ratified instruments. Ideally, affected populations should also have a say in the crafting of the codes, since they can legitimately be considered as stakeholders.

The exact content of the code needs still to be determined, but it should anyhow set the necessary standards that Bank's projects are to meet if they want to be successful in terms of sustainable and effective development.

## **5.4 Sanctions**

In the previous section we have seen that Codes of conducts have the potential to set external standards of sustainable development.

In this last section, I will outline some of the potential sanction mechanisms that I have found whilst analysing mechanisms of CSR.

Once again, the aim is to determine in which cases instruments of CSR can trigger market-driven forces which can penalise the World Bank in one way or another.

### **5.4.1 Codes of conduct**

In the areas of codes of conducts, there are some market-driven forces which push companies to adopt the former. If, for example, States and NGO's were to introduce a sectoral code of conduct, it would have the effect of forcing the other actors to adopt it. Indeed, the adoption of such a code carries *economic stakes*: market actors appearing to respect these new standards acquire a competitive advantage because they appear to be in a leading position. In other words, if the new sectoral code of conduct appears to crystallise the new rules of the game, the other actors will have no choice than to abide by them. Otherwise they would run the risk of being marginalized and as result, of loosing market shares.<sup>279</sup>

### **5.4.2 Contracts**

Another sanctioning mechanism is contracts. Indeed, as is usual in market operations, companies make business with others through the use of contracts. Equally, when asked to perform a service, a company can sub-contract part of this service to another company. If a company enters into a sub-contract and wants to remain coherent with its CSR engagements, it should make sure its sub-

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<sup>279</sup> Gendron, Lapointe, Turcotte, 2004, p. 78.

contractor also respects these engagements. This is done through the use of contractual clauses which impose the respect of the code of conduct of the contracting company.<sup>280</sup>

Therefore, if the sub-contracting company breaches the provisions of the code of conduct, it equates to a violation of the contract which can result in the termination of the latter.

This system can also be applied to the World Bank, although in a modified way.

Indeed, we know that the institutions value local ownership of the projects (cf. *supra*, chapter I). Therefore, it highly values the participation of local NGO's in the implementation of the projects it has financed. According to the Bank, beyond the fact that NGO's participation is an effective means for giving affected people a say in decisions that influence their lives, it is also seen as being instrumental in improving development effectiveness.<sup>281</sup> So, project implementation ran by NGO's is seen by the Bank as essential. Therefore, NGO's could ask, as "sub-contractors", that the Bank respects the code of conduct it has adopted. In the event of a violation it would "terminate the contract" and stop implementing the project. This would be directly detrimental to the World Bank since it sees local implementation as a key factor of its development strategy. Moreover, They could then propose their help to one of the other "development suppliers", which would result with the Bank losing some importance on the development market.

#### 5.4.3 Labels

Labels are "*symbols displayed on the packaging of goods (...) certifying that the production and marketing process have respected a set of criteria*".<sup>282</sup> As we have seen above, labels are produced by private actors: labelling associations. In the area of CSR, labels are less concerned with the intrinsic quality of a product than with the conditions in which it has been produced (e.g., child labour, environmental issues etc...)<sup>283</sup> In short, labels are external instruments testifying the quality of a given good. In our case, this would result with the creation of labels adapted to the specificity and requirements of effective and sustainable development.

They can trigger a two-folded market sanction.

First, they appeal to consumers (in our case developing countries): since they show that a given product is respectful of human rights standards, there is a chance that consumer will favour the labelled product.<sup>284</sup> Thus, in our case, if a development NGO or a State are labelled as respecting the

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<sup>280</sup> Hennebel, Lewkowicz, undated, p. 15.

<sup>281</sup> World Bank, 2005, paragraph 11-13; Dalle, 2006, pp. 12-15.

<sup>282</sup> European Commission, 2004, p. 41.

<sup>283</sup> OECD & ILO, 2008, p. 6; Hennebel, Lewkowicz, undated, p. 34.

<sup>284</sup> *Ibidem*, p. 35.

necessary criteria to uphold effective development and the World Bank is not, there is a chance that developing countries will discard the latter.

In addition to that, compliance with the criteria set in the label is controlled through certification process. In other words, the labelling institute or a certification agency accredited by the former will certify that the company asking to be labelled is respecting this very label. To that end, they enter into a certification process. This process equates to a regular monitoring comprised of *on situ* visits, audit, interviews of affected people, and so on. If the certification body comes to the conclusion that the company is not respecting the criteria, it may decide to sanction it by withdrawing the label.<sup>285</sup> Thus, certification provides a higher quality assurance which should convince consumers (developing countries) to opt for labelled projects.

#### 5.4.4 **Socially Responsible Investment:**

Finally, a last sanction mechanism that I have identified is Socially Responsible Investment. This mechanism resorts to investors on stock markets.

Investors can play a sanctioning role in different ways.

First they can resort to screening. Screening regards the inclusion or exclusion of stocks and shares in investment portfolios based on ethical, social or environmental grounds. There are two ways of screening a company to invest in: negative screening which excludes companies involved in certain types of activities (e.g. armament, pornography etc...), or positive screening which means that only companies which fulfil a certain set of criteria will be worth being invested in.<sup>286</sup>

Of course, we have seen that the World Bank shares are not available since they are the sole property of its member States. Nonetheless, we have also seen that the institution resorts to financial markets to issue bonds and other financial products. Therefore, we could apply the same “screening logic” to these financial instruments.

Another way in which investors can economically sanction the World Bank is through the use of Stock Market Indexes. In the last few years we have witnessed the rise of stock market indexes that are specific to CSR. These indexes select certain companies according CSR performances assessed by specialized rating companies. Therefore if a company fails to live up to its CSR engagements it will get excluded from the index. This will result with a direct loss for the company since certain investors decide to invest only in companies listed in those indexes.<sup>287</sup>

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<sup>285</sup> European Commission, 2004, p. 42.

<sup>286</sup> *Ibidem*, p. 48.

<sup>287</sup> *Ibidem*, p. 49; Hennebel, Lewkowicz, undated, p. 37.

## **5.5 Conclusions**

In this last section we have just seen how this legal/market accountability approach can work and address the critics formulated against the accountability system currently in place at the World Bank.

The cornerstone of the system is Corporate Social Responsibility which achieves several things. First, it creates the link between sustainable development concerns and the market, thereby creating the necessary conditions for the existence of market-driven sanctions. In addition to that, we have seen that CSR is an instrument of global governance, meaning that it is created by wide range of actors. Therefore, the standards it sets are legitimate inasmuch as they are external to the Bank.

Let's now summarize everything and see whether this system is can effectively address the accountability shortcomings we have identified.

First of all, this system is not based upon a domestic analogy. In that sense it needs not determining who the constituency to whom the World Bank should be accountable is.

Moreover, it is a mechanism which is external to the Bank since both standard setting and sanctioning are entrusted to other actors.

As a consequence, it also provides us with a sanction element which is absent from the World Bank's mechanisms.

Finally, the sanctions are market-driven. In that sense they can address the "culture of approval" issue, since Bank staff will see that if the institution is to become more profitable, it should abide by the standards it has endorsed.

Of course, I have not addressed the practical modalities and the exact content of the codes of conduct. What is obvious is that the whole system should be adapted to the characteristics of the development aid market and to the requirements of development effectiveness. However this is beyond my intention.

## Conclusions

The World has changed with globalisation; it is getting always more interconnected and integrated. Along with the emergence of new players, our certitudes about our political environment are eroding.

Citizens who thought they had some control over the political affairs of their country feel that their grip is loosening. On the other hand, people from very different cultures have the possibility to interact and to eventually make cosmopolitanism come true. This is the global paradigm.

As a matter of fact, what matters most is democracy and political freedom. As Arendt has shown, the very original freedom is political freedom (instead of metaphysical freedom), which can only exist within the political space. It is the most important, because it precedes all other, more ontological experiences of freedom. That is why democracy is so important: it is the political system which grants us the possibility of political self-determination. It is one of the rare things which can be considered as their own end.

However, globalisation as I have described it is putting this State-centred system at jeopardy by giving more and more competences to transnational bureaucracies. If nothing is done, we might well end up with “*a global technocratic totalitarianism*”.

This is the reason why there is an urgent need to democratize global governance, and enable citizens to exert some control over those institutions. Of course, global democracy is, as far as today not possible, and in order to fill this conceptual gap authors (such as those involved in the Global Administrative Law project) have resorted to the notion of accountability: a notion broad enough to be used globally.

This is the perspective I have chosen as well.

The solution I have argued for is far from being perfect, I am well aware of that. However, if it could make the World Bank just a bit more accountable, by making it respect its projects more and as a consequence by giving a greater say to the poor and affected people (who are the primary reason for the work of the Bank and for its acceptance of funding projects), I would consider this as a great achievement.

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