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Compliance with Operational Standards: The Contribution of the World Bank Inspection Panel

Laurence Boisson de Chazournes* 

The establishment of the Inspection Panel broke new ground in the international legal order. As a pioneering endeavor in the international organizations field, individuals were granted the right to bring complaints in an international forum for alleged failures of an international organization: under the procedure put in place, private persons are given direct access to the World Bank (hereinafter the “Bank”) if they believe they are directly and adversely affected by a Bank-financed project due to the bank’s failure to observe its policies and procedures regarding the design, appraisal and implementation of the projects it finances.¹ Not only is the Inspection Panel innovative from an institutional viewpoint, but it also provides a mechanism by which to increase scrutiny over the Bank’s activities in shedding light on a feature of great interest, i.e. the standards governing the operational activities of an international organization – in the present case, the World Bank – and the extent to which the organization ensures its respect in its lending activities.

The creation of the Inspection Panel was triggered by the goal of improving quality control in the Bank’s operations during project preparation and in the supervision of the implementation of projects financed by the Bank.² In this context, the Inspection Panel was established as an independent and permanent organ within the Bank’s structure. It was granted the competence to receive and, subject to the approval of the Bank’s Board, to investigate complaints from groups of individuals whose rights or interests have been or are likely to be directly and adversely affected by the Bank’s failure described above. An individual Executive Director in the Bank and the Bank’s Board may also instruct the Panel to conduct an investigation.

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¹ The mandate of the Inspection Panel covers projects financed by the International Bank for Reconstruction and Development (IBRD) and the International Development Association (IDA).
nature, some being mandatory requirements for Bank staff. With respect to the Inspection Panel, alleged policies’ mandatory character is a condition of eligibility of complaints. The question of the binding nature of the standards as contained in these series of documents was, in great part, resolved with a decision of the Management of the Bank adopted in 1992 in order to ensure greater clarity of, and compliance with, the standards. This decision was the result of discussions about the need to clarify the limits of flexibility in the application of the Operational Directives, as well as the need to simplify the Bank’s business practices. In this context, it was decided to gradually replace the documents called “Operational Directives” (ODs) with statements termed “Operational Policies” (OPs), “Bank Procedures” (BP) and “Good Practices” (GPs).

While OPs and BP are binding on the staff of the Bank within the limits of flexibility provided therein, GPs are not. The latter are intended to disseminate knowledge and indicate successful examples. The consequences of this decision for the Inspection Panel’s competence is that requests alleging failure of the Bank to follow requirements as spelled out in the recent series of documents entitled OPs and BP, meet one of the eligibility requirements with respect to the ratione materiae competence of the Panel as they are binding on the staff of the Bank.

At present, however, not all ODs and other documents issued before the ODs series was launched, have been converted to OPs, BP and GP. In addition, requests brought to the Inspection Panel may originate in “pre-conversion” situations in which the relevant instruments for appreciation of an alleged Bank’s failure are ODs and other series of documents. These situations may be sources of legal controversies. Such controversies could

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9 With regard to the content of OPs and BP, the World Bank Policy on Disclosure of Information states that “Operational Policies” as short statements (usually one or two pages) of policy, ‘Bank Procedures’ spell out the required documentation and common set of procedures needed to ensure operational consistency and quality.” (Washington, DC: March 1994)
10 As provided by the Resolution, the Panel’s ratione materiae competence is ascertained in the light of four requirements: 1) an alleged failure of the Bank to follow its operational policies and procedures in the design, appraisal and/or implementation of a project financed by the Bank, 2) the alleged failure must be of a certain gravity, 3) the alleged failure must relate to the Bank’s own policies and procedures and 4) the alleged failure must be such as to have or to be likely to have an adverse material effect on the complainant, see Role of the Inspection Panel in the Preliminary Assessment of Whether to Recommend Inspection – A Memorandum of the Senior Vice President and General Counsel, January 3, 1995, 34 International Legal Materials 503 (1995), pp.525-534.
11 See, for example, Inspection Panel Report on Review of Present Project Problems and Assessment of Action Plans (Argentina/Paraguay: Yacare Electric Project), in which the Inspection Panel listed a series of Operational Directives and other documents applicable to the request, INSP/R97-10, p. 56.
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arise due to the fact that ODs may contain standards which are not binding on the staff of the Bank. An assessment of the binding nature of their provisions on the staff depends on the wording of each standard.\textsuperscript{12}

Having stated the principle that operational policies and procedures as defined in the Resolution are applicable standards, the violation of which may give rise to complaints before the Inspection Panel, the Resolution also indicates that the notion of operational policies and procedures “does not include Guidelines and Best Practices and similar documents or statements”. This sentence makes clear that non-binding operational statements do not pertain to the competence of the Panel.

\textit{Procurement Guidelines}

Special mention should be made of the “Procurement Guidelines” as the title may be misleading. While they are called “guidelines”, they become in fact mandatory requirements once referenced to in loan agreements. The Resolution itself makes clear that complaints against procurement decisions reached by the Bank borrowers in connection with supplies of goods and services financed by Bank loans are beyond the scope of an investigation by the Panel.\textsuperscript{13} This should, in fact, be viewed as a reiteration of the principle according to which complaints brought for borrowing countries’ violations do not fall within the mandate of the Inspection Panel.\textsuperscript{14} In the course of the Panel’s activities, a problem, however, arose as to procurement action taken by the Bank. Following a request brought before the Inspection Panel, the Executive Directors adopted a decision,\textsuperscript{15} reiterated in the Clarifications endorsed by the Executive Directors on October 17, 1996, (hereinafter the Clarifications)\textsuperscript{16}. It made clear that “No procurement action is subject to inspection by the Panel, whether taken by the Bank or a borrower” and that “A

\textsuperscript{13} Paragraph 14 (b) of the Resolution reads as follows: “Complaints against procurement decisions by Bank borrowers from suppliers of goods and services financed or expected to be financed by the Bank under a loan agreement, or from losing tenderers for the supply of any goods or services, which will continue to be addressed by staff under existing procedures”
\textsuperscript{14} L.Foret, Le “Panel d’inspection” de la Banque mondiale, Annuaire français de droit international, 1996, p.656.
\textsuperscript{15} See Decision Number 1: Inspection Panel’s Mandate on Procurement Matters, The Inspection Panel, Report, August 1, 1994 to July 31, 1996, pp.55-56.
\textsuperscript{16} Under the basis of paragraph 27 of the Resolution, a Board review of the Inspection was conducted and completed in July 1996. It resulted in the issuance by the Board of Clarifications “which in fact introduced some amendments (by addition) to the resolution”, I.F.I. Shihata, The World Bank Inspection Panel – A Background Paper on its Historical, Legal and operational Aspects, this volume.
separate mechanism is available for addressing procurement-related complaints".17

Related eligibility criteria

Together with their alleging of a violation of operational policies and procedures, the complainants must demonstrate that the violation is due to an omission or action of the Bank with respect to the design, appraisal, and implementation phases of a project financed by the Bank.18 The Clarifications have made clear that “the word ‘project’ as used in the Resolution has the same meaning as in the Bank’s practice, and includes projects under consideration by Bank management as well as projects already approved by the Executive Directors.” As defined, the notion of “project” is wide and encompasses all developmental activities eligible to be financed by the Bank.19 As to the notions of design, appraisal and implementation, they should be understood in light of the concept of project cycle in Bank operations encompassing various phases, the Bank having a certain role, and therefore different responsibilities, in each of them.20

The request for inspection may relate either to a project under consideration by Bank Management, i.e. a project in the design, preparation, pre-appraisal or appraisal stage, or to a project already approved by the Board and financed by the Bank. More particularly, with respect to the implementation phase, the Resolution specifies that a complaint can be lodged for “situations where the Bank is alleged to have failed in its follow-up on the borrower’s obligations

18 The Resolution refers to the “(...) failure of the Bank to follow its operational policies and procedures with respect to the design, appraisal and/or implementation of a project financed by the Bank (including situations where the Bank is alleged to have failed in its follow-up on the borrower’s obligations under loan agreements with respect to such policies and procedures)”
19 The notion of project is not limited to specific investments. It includes projects consisting of programs or activities other than specific physical works, see Decision No.2 of the Executive Directors: Scope of the Panel’s Mandate – Compensation for Expropriation and Extension of IDA Credits to Ethiopia under OMS 1.28, The Inspection Panel, Report, August 1, 1994 to July 31, 1996, p.57. More generally, see “Project and Non-Project Financing under the IBRD Articles”, Legal Opinion of the Senior Vice-President and General Counsel, December 21, 1984.
20 The Bank’s project cycle covers the life of a project from identification of needs and priorities until the final completion of work and evaluation of results; see W. C. Braum, The Project Cycle, IBRD, 1982; The World Bank’s Partnership with Nongovernmental Organizations, The World Bank, May 1996, p.7.
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under loan agreements” with respect to operational policies and procedures. The Panel has the mandate to investigate whether the Bank has properly followed up on the carrying out by the borrower of its obligations under a loan agreement. The latter include the notion of green conditionality. As a matter of fact, a number of legal techniques have been developed for ensuring that policy requirements are reflected in loan agreements. Specific loan covenants as well as other techniques, such as the attachment of an implementation program or plan of action as a schedule to the loan agreement, are used for specifying the actions to be taken by the borrower. Within the framework of its responsibilities, the Bank should exercise all due diligence required to make sure that the borrower’s obligations are fully complied with in a timely fashion, i.e. that the borrowing country does abide with all its contractual obligations.

2. ENVIRONMENTAL AND SOCIAL STANDARDS AND THEIR RELATIONSHIP WITH INTERNATIONAL LAW

The Bank’s operational policies and procedures integrate a number of social and environmental issues and considerations, ranging from the protection of specific vulnerable groups of people to water resources management issues. Some of these instruments are of a general application, others more specific. They provide for guidelines and requirements to be followed by Bank staff in Bank financed projects. They also indicate the borrower country’s responsibilities in taking into account the environmental and social issues.

Most of the requests so far made to the Inspection Panel allege that the Bank has not followed its environmental and social policies and procedures. Among the most quoted, are the Environment Assessment policy, the Indigenous Peoples policy and the Involuntary Resettlement policy, as well as the policies dealing with the Involvement of Nongovernmental Organiza-

21 The Resolution states as a principle that no requests will be declared eligible regarding a project after the project’s loan “closing date” or after 95 percent or more of the loan proceeds have been disbursed. For an interpretation of this requirement, see “Time-Limits on the Eligibility of Complaints Submitted to the Inspection Panel”, Legal Opinion of the Senior Vice President and General Counsel, July 28, 1997.


Environmental assessment policy

The Bank’s operational policy on environment assessment (EA) constitutes a cornerstone for project activities with potential environmental consequences. It lays down standards and procedures for the conduct of environment assessment. Its purpose is to ensure that the project options are environmentally sound and sustainable, and thus to improve decision making. All Bank projects are screened in reference to three categories (categories A, B and C) to determine the appropriate level of environment assessment. Such an assessment will be conducted to ensure that development options under consideration are environmentally sound and sustainable and that any environmental consequences are recognized early in the project cycle and taken into account in the project design. Environmental assessments identify ways for improving projects environmentally, and minimizing, mitigating or compensating for adverse impacts. Among other issues to be taken into account, the environment assessment should also make sure that the project is in full compliance with domestic law requirements as well as with the international treaties to which the borrowing country is a party.

The most rigorous assessment process is required for a project which is likely to have significant adverse environmental impacts (i.e category A projects), such as impacts that are sensitive, diverse or unprecedented or that affect an area broader than the sites or facilities subject to physical works. If the environmental impacts are less adverse (category B projects), a less exhaustive form of environmental assessment is required. In the case where the project has no, or minimal, adverse environmental impacts (category C projects), no environmental assessment is required. Meaningful consultations with project-affected groups and local NGOs are required during the environment assessment process. Consultations should be initiated as early as

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24 The operational policies and procedures are available on the Bank’s web site (www.worldbank.org). As of February 20, 1998, the Environment Assessment policy, the Indigenous Peoples policy and the Involuntary Resettlement policy are still in the OD format. GP 14.70 on Involvement of Nongovernment Organizations in Bank-supported Activities was issued in March 1997 and BP 17.50 on Disclosure of Operational Information was issued in September 1993.

25 OP 4.01 on Environmental Assessment (forthcoming) includes a fourth category, i.e: "Category Fl: A proposed project is classified as Category Fl if it involves investment of Bank funds through a financial intermediary, in subprojects that may result in environmental impacts". It also specifies that in the context of a proposed project, the analysis of alternatives to environmental implications should include a “without project” situation.
possible. For Category A projects, the projects with the most potential significant environmental impacts, public participation is required at least at two stages, i.e. shortly after environmental screening and before the terms of reference for the EA are finalized, and once a draft EA is prepared, as well as throughout project implementation.

Dam and reservoir projects receive a special treatment in the Bank’s EA procedures. The purpose is to avoid, minimize, or compensate for adverse environmental impacts wherever possible, using design features and measures implemented as part of the project. The potential project impact is determined at an early stage with the advice of environmental specialists. At the earliest stage, during project identification and before assigning an environmental category to the project, the Bank must ensure that the borrower selects independent, recognized experts to carry out environmental reconnaissance that includes identification of the project impacts, ascertainment of the scope of the EA, assessment of the borrower’s capacity to manage an EA process and advising on the need for an independent advisory panel which would normally be set up for large dam projects.

*Indigenous peoples*

The Bank has a specific policy which addresses the concerns of indigenous peoples. The notion of indigenous peoples covers groups including “indigenous ethnic groups”, “tribal groups” and “scheduled tribes”, but is not restricted to these groups. They are defined as social groups whose social and cultural identity is distinct from that of the dominant society and makes them vulnerable to being disadvantaged in the development process. The definitional criteria focused on the issue of vulnerability and distinctiveness, although other criteria have a role to play: close attachment to ancestral territories, indigenous language, self identification, presence of customary social and political institutions and primarily subsistence-oriented production. The purpose of the policy is that these social groups benefit from development projects and that potentially adverse effects of Bank projects on indigenous people are avoided or mitigated. The Bank calls for their “informed participation” in projects and programs that affect them. To this effect, an indigenous peoples development plan is prepared by the borrowing country to provide the framework for indigenous peoples’ participation in project activities and to ensure that these peoples receive socially and culturally appropriate benefits. From a legal viewpoint, the policy requires that the development plan assesses: (i) the legal status of groups covered by the policy, as reflected in the
country’s constitution and legislation; and (ii) the ability of such groups to obtain access to and effectively use the legal system to defend their rights.

Involuntary resettlement

As a basic policy objective, involuntary resettlement should be avoided or minimized where feasible and all viable alternative project designs should be reviewed. Any operation that involves involuntary land acquisition is reviewed for potential resettlement requirements early in the project cycle. The objective of the policy is to assist displaced people who have lost their land, houses, or both, or their means of livelihood, in their efforts to restore or improve former living standards and earning capacity.

Where displacement is unavoidable, the borrower country is required to prepare and carry out resettlement plans or development programs indicating the compensatory measures to be carried out, an implementation scheme, including a reference to a grievance mechanism permitting affected peoples to bring complaints, as well as a time-table and a budget. The policy defines the reference standards for determining the compensatory measures. Displaced people should be (i) compensated for their losses (land-for-land/market value/mixture of land-based and non-land-based strategies), (ii) assisted with the move and supported during the transition to the resettlement site, and (iii) assisted in efforts to improve their former living standards and income earning capacity. Particular attention should be paid to the needs of the poorest.

Informed participation and consultations with the affected people is required during the preparation of the resettlement plan. Community participation in planning and implementing resettlement should also be encouraged. Appropriate attention should be given to indigenous peoples, ethnic minorities and “pastoralists” who may have customary rights to the land or other resources taken for the project.

NGOs and disclosure of information

Bearing in mind the potential contribution of NGOs, among others, in areas concerning environmental degradation, involuntary resettlement and indigenous peoples, a Bank policy – at present, a “Good Practices” policy – sets out a framework for involving these organizations in Bank-supported activities and provides staff with guidance for working with them. The policies and procedures on environment impact assessment, indigenous peoples and
unvoluntary resettlement also contain specific provisions requiring the involvement of NGOs.

The policy on disclosure of operational information sets out the procedures with respect to Bank documents. In particular, it states the procedures to be followed for making accessible to affected groups and local NGOs in borrowing countries copies of environmental assessments and of environmental action plans. This policy, as well as the one on the involvement of NGOs, complement in many respects the other above-mentioned policies. All together, the policy requirements “operationalize” important international standards, such as access to information, public awareness and participation in decision-making through Bank’s projects.

**Relationship with international law standards**

As can be seen, the World Bank does not operate in a closed world. The environmental and social operational policies and procedures reflect concerns related to the promotion of sustainable development as expressed in many other fora. Operational policies and procedures are in fact vehicles for achieving this objective, although they are not necessarily exhaustive in covering all issues which pertain to their scope of application. The relationship between these policies and international law standards contributes to promoting sustainable development. In particular, the policies’ references to international law promote respect for good practices as endorsed in international instruments of a binding character as well as of a non-binding character.

Before presenting the relationship of the operational policies and procedures with international law standards, it should be remembered that operational policies and procedures are not by themselves binding under international law. Policy requirements related to the implementation of projects only become binding when they are reflected in loan agreements. By entering into an agreement, the borrowing state is under the obligation to take necessary measures to comply with its contractual obligations which may include policy issues. Within the framework of its responsibilities, the Bank should exercise all due diligence required to make sure that all borrower’s obligations are fully complied with.

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26 The Bank has established a Public Information Center, presently called “Infoshop”, through which much of the material covered by the policy is available. It is located at the Bank Headquarters and serves the public in member countries through the Internet and through Bank field offices.

27 As a note of caution, on each operational policy figures a standard notice which states that the policy is “not necessarily a complete treatment of the subject”.

Urheberrechtlich geschütztes Material
At the outset, it is to be noted that the policies on environment assessment, indigenous populations and involuntary resettlement require that the projects financed by the Bank are in compliance with the domestic legal order of a borrowing country. Various means allow for countries to integrate their international commitments in their legal order. As such, they become part of the domestic legal order of the borrower and should be taken into consideration when implementing the relevant policies and procedures. Moreover, as a general requirement, first stated through a policy adopted in 1984,28 the Bank has committed itself not to finance projects that contravene any international environmental agreements to which a member country concerned is a party. This principle was reiterated in the OP on forestry29 and in the OP on environment assessment.30 This commitment, which shapes the conduct of the Bank with respect to international environmental agreements, also increases the awareness of borrowing countries with respect to the significance of international environmental law requirements and the importance of their being implemented.

Operational policies and procedures may also expressly refer to international standards as a means for identifying the good and best practices to be followed. As an example, the OP on management of cultural property in Bank-financed projects makes explicit reference to country obligations under international treaties for defining cultural property under the policy.31 The OP on pest management also refers to international law instruments as an indication of good practices to be followed in the area covered by the policy.32 Other international instruments, even though not referred to explicitly, may play a similar role, at least for interpretation purposes. This may, for example, be the case when the UN convention on biological diversity33 is considered in the context of the application of the policy on indigenous peoples. These various interactions between international law and operational standards underline, if needed, the pragmatic nature of the latter aimed at identifying best practices for sustainable development purposes.

29 Operational Policy (OP) 4.36 on Forestry.
30 Operational Policy (OP) 4.01 on Environment Assessment (forthcoming).
31 The Convention Concerning the Protection of the World Cultural and Natural Heritage (1972) is given as a reference, see OP 4.11, par.2 (a) (forthcoming).
32 For the purpose of the policy (OP 4.09), minimum standards are defined with reference to the FAO’s Guidelines for Packaging and Storage of Pesticides (Rome, 1985), Guidelines on Good Labeling Practice for Pesticides (Rome, 1985) and Guidelines for the Disposal of Waste Pesticide and Pesticide Containers on the Farm (Rome, 1985). See also, the forthcoming policy on application of EA to projects involving pest management (BP 4.01-Annex C).
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The fact of taking into consideration the international instruments to which a borrowing country has committed itself or which are considered as reflecting agreed international good practices, shows the close relationship of the operational policies and procedures with international law principles and standards in areas which fall within the scope of application of the policies. In addition, operational policies and procedures constitute means which generate new practices and standards in borrowing countries and as such favor the emergence or consolidation of international practices.\(^{34}\) The highlighting of this "model" role reveals in some respects the difficulties surrounding the application of operational policies and procedures. As a matter of fact, they promote respect for progressive and process-oriented standards whose application on the ground may face resistance or uncertainty as to how to implement them in a sound manner.

The required public participation policy and/or meaningful consultations provides a good example of how challengeable and difficult it may be to meet these standards from one region to another or from one country to another. It is one thing to establish the sequencing of actions to be conducted and the timing for certain procedural requirements in terms of public participation, but quite another to put in place a real and meaningful participation process. Factors such as cultural traditions, the notion of public space for debate, the existence of an institutional framework or the rate of literacy, all play a significant role towards implementing these principles and should be taken into account in the context of the flexibility provided by the relevant operational policies and procedures. In this context, the borrowing country should do its best efforts to take the most appropriate measures for implementing the policy requirements in light of the aim of meaningful public participation for ensuring the protection of the environment and of the affected people.\(^{35}\) The Bank, on its side, should exercise due diligence for making sure that the


\(^{35}\) Parallels can be drawn with international law notions for interpreting the notion of best efforts. Such can be the case with the obligation to undertake to take steps with a view to achieving progressively the full realization of economic, social and cultural rights, as spelled out in Article 2, para.1 of the International Covenant on Economic, Social and Cultural Rights. On this matter, see the General Comment of the UN Committee on Economic, Social and Cultural Rights, Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies, HRI/GEN/1/Rev.3, para.1-14.
borrower complies with the policy requirements dealing with public participation.

3. The Inspection Panel and the Promotion of Compliance with Operational Policies and Procedures

Compliance with environmental and social operational policies and procedures is undoubtedly an important tool for ensuring quality in the Bank’s activities. Although the creation of the Inspection Panel is an important achievement in this respect, various other means contribute to compliance with operational policies and procedures. Besides checks and balances, mechanisms and procedures such as internal review processes during the preparation of a project and the imposition eventually of measures of a disciplinary nature, there are rule-oriented mechanisms which promote respect with policy requirements. This is the case, for example, with the legal techniques mentioned earlier which have been developed for ensuring that policy requirements are reflected in loan agreements, the borrower thereby being legally committed to implement them. On its side, the Bank exercises with due diligence its supervisory functions to ensure that the borrower comply with its contractual commitments. As a final resort, the Bank may take more extreme measures, such as the suspension of disbursement or the cancellation of a loan if the borrower does not carry out its contractual obligations.36

The establishment of the Inspection Panel complements the above-mentioned series of means because it allows individuals to put under scrutiny the Bank’s compliance with its operational standards. The Bank has institutionalized the compliance concern in establishing a specific organ to conduct investigation and by providing for the possibility of remedial action taken by the Bank in the case of a violation of operational policies and procedures which has impaired the rights or interests of a group of people. Moreover, besides allowing for remedies to individuals, the establishment of the Inspection Panel has encouraged a process on a Bank-wide level which demonstrates its potentialities for clarifying the content of operational policies and procedures and to increasing awareness of the need to comply with these policies and procedures.

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Powers of the Inspection Panel

Before looking at this two-fold contribution, it should be noted that the Inspection Panel is not vested with normative powers of a general nature. Its rule-making powers are strictly limited to the adoption of rules for "procedural matters relating to the work of the Panel". The Panel adopted such rules on August 19, 1994 (hereinafter the "Operational Procedures"). These rules are based on the Resolution establishing the Inspection Panel and are aimed at providing detail on its operational aspects. The Inspection Panel therefore does not have the competence to legislate or enact new standards, nor does it have the competence to amend existing operational policies and procedures.

Vested with investigatory powers, the latter are however of a limited scope. They can only be exercised with respect to requests alleging a failure by the Bank to follow its policies and procedures in specific operational activities. This entails that the Panel is not entitled to review "the consistency of the Bank’s practice with any of its policies and procedures" regardless of its content, nor is the Panel entitled to decide on a general basis the adequacy of a particular policy or procedure. Within the limits of its mandate, however, the Panel plays an important role for promoting compliance with operational standards.

Clarification and awareness as means to promote compliance with operational standards

The Panel exercises its investigatory and quasi-investigatory powers on a case-by-case basis, not to say on a project-by-project basis. In so doing, the Panel must decide on the applicability of relevant policies and procedures. The Panel must then interpret their content with regard to the possible failure of the Bank in complying with them. Through its interpretative function, it may

37 See paragraph 24 of the Resolution establishing the Inspection Panel
38 See introduction to the Operating Procedures.
39 See Clarifications (Eligibility and Access)
41 In reference to the practice developed so far and described by I.F.I. Shihata, The World Bank Inspection Panel – A Background Paper on its Historical, Legal and Operational Aspects, op.cit.
42 This interpretative function is limited to operational policies and procedures and is exercised under the overall review of the Bank’s Board, and to the extent that they do not involve the Bank’s
contribute to the promotion of compliance with operational policies and procedures. This process allows, in fact, for clarification of the content of operational policies and procedures. It also gives the Inspection Panel the opportunity to highlight best practices in applying these instruments, but most importantly, it allows the Inspection Panel to publicize bad practices which have given rise to complaints before the Inspection Panel, and as such reveal possible failures and inconsistencies in complying with operational policies and procedures.

The dynamics attached to such interpretative function should also be seen in a broader institutional context. As provided for by the Resolution, the Panel is engaged in a dialogue with the Management when discussing an alleged failure of the Bank to follow its operational policies and procedures. The Executive Directors also play a pivotal role when exercising their powers as prescribed by the Resolution. A process is stirred, the end result of which may also contribute to clarifying the content of policies and procedures, as well as remedying the problems through the adoption of action plans. In addition, the Executive Directors may also adopt decisions on general matters relating to the Inspection Panel. They have done so for defining the scope of the Panel’s mandate in light of the Resolution. Incidentally, such exchanges of views may contribute to clarifying some operational policies and procedures’ requirements.

Another contribution of the Inspection Panel relates to the enhancement in general of the quality of Bank operations. The conclusions and recommendations of the Inspection Panel may signal possible failures of the Bank in following operational policies and procedures and may increase the awareness of the Bank’s staff in the importance of implementing operational policies and procedures. Most of the requests brought so far to the attention of the Panel have dealt with environmental and social policies and procedures. The ensuing recommendations and findings of the Inspection Panel have stressed the need for giving greater attention to compliance with these instruments. Such a contribution is reinforced when the Executive Directors authorize fullfledged legal rights and obligations. For matters related to the Bank’s rights and obligations with respect to a request under consideration, the Panel shall seek the advice of the Bank’s Legal Department, see Resolution, paragraph 15.

43 The Decision of the Executive Directors on the Scope of the Inspection Panel’s Mandate – Compensation for Expropriation and Extension of IDA Credits to Ethiopia under OMS 1.28 may provide an example of nurturing process or “constructive dialogue”. Although the main issue was the scope of the Inspection Panel’s mandate, the exchange of views which took place provided some guidance as to the interpretation of OMS 1.28 (now OP 7.40 on Disputes over Defaults on External Debt, Expropriation, and Breach of Contract). See The Inspection Panel, Report, August 1, 1994 to July 31, 1996, pp.56-58.
investigations to be conducted under the basis of paragraph 20 of the Resolution.

Compliance and access to information

Making public all the documents related to the Inspection Panel’s activities, as provided for in the Resolution and the Clarifications (i.e. the request itself, the Management’s response to it, the Panel’s recommendation on the eligibility of the request, the Board’s decision to authorize or deny an investigation, the Panel’s findings, the Management’s comments and the final Board decision).\(^44\) enhances the twofold contributions of the Panel with respect to compliance with operational policies and procedures. These clarifying and awareness contributions could in the future also be supported by a decision to publish in a more systematic way the sets of documents issued at the different stages of the procedure. This could, for example, be done through the setting up of an official Bank collection or series. Such a decision would simplify access to and dissemination of information, as well as help “make the Inspection Panel better known in borrowing countries”.\(^45\) In addition, while this information is publicly available it is not easily accessible for all interested people. In this context, more extensive use should be made of the existing electronic technologies.

Moreover, making public all documents contributes to “objectivizing” the issues at stake in making them known to the public at large. In so doing, it contributes to fairness and accountability at all stages. These aspects would in fact be strengthened with an increased formalization of the process driven by the Resolution establishing the Inspection Panel. Resort to comparative jurisprudence and to legal interpretative methods have a role to play for deciding on the eligibility of a complaint brought to the Panel, for interpreting the operational policies and procedures and for drafting the recommendations to the Executive Directors. Such processes would also facilitate the building-up of the decision-making process onto decisions and recommendations of the various organs as well as favour consistency and predictability. The Inspection Panel, the Management of the Bank and the Executive Directors may want to

\(^{44}\) See paragraph 25 and paragraph 26 of the Resolution and paragraph 41, paragraph 56 and paragraph 65 of the Operating Rules. In addition, see the Clarifications (Outreach) which state that: “Management will make its response to requests for inspection available to the public within three days after the Board has decided on whether to authorize the inspection. Management will also make available to the public opinions of the General Counsel related to the Inspection Panel matters promptly after the Executive Directors have dealt with the issues involved, unless the Board decides otherwise in a specific case”.

\(^{45}\) See Clarifications (Outreach)
take this plea into consideration when exercising their respective powers within the framework of the Resolution establishing the Inspection Panel,\(^\text{46}\) bearing in mind, at the same time, the mere purpose of this innovative procedure which is to provide effective access to affected private parties in an international forum of a non-judicial character.

### 4. CONCLUDING REMARKS: THE INSPECTION PANEL, PUBLIC PARTICIPATION AND SUSTAINABLE DEVELOPMENT

Different concepts and notions gained legitimacy in the course of the preparation of the 1992 Rio Conference on Environment and Development. They contributed to substantiating the concept of sustainable development and revealing the possible integrative nature of development efforts. Such was the case with the notions of good governance, public participation and access to justice, the Rio instruments stressing the fact that representatives of the civil society were important actors who should be part of the decision-making process and should be granted the right to exercise remedies for ensuring sustainable management of resources.\(^\text{47}\)

With the adoption of its various social and environmental operational policies and procedures, the Bank had already acknowledged the fact that public participation is a core principle for development assistance activities. Moreover, in establishing the Inspection Panel in 1993, the Bank created a new path for public participation: it allowed individuals to bring complaints before a newly established organ against its failures if they believe that their interests have been impaired. More generally, in promoting such access, the Panel mechanism demonstrates the growing importance of the individual as an emerging rights holder in areas of development and environment. The Inspection Panel, in fact, is at the crossroads of the fields of development, environment and human rights, highlighting their close interrelationships for promoting sustainable development and providing a new venue for a dialogue.

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\(^\text{46}\) It has been suggested that at least one of the members of the Inspection Panel should have legal expertise, see D. Bradlow, International Organizations and Private Complaints: The Case of the World Bank Inspection Panel, Virginia Journal of International Law, 1994, Vol.34, p.573.

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between a lending institution and the direct beneficiaries of its developmental activities.