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The Inspection Panel Early Years (An Inside Story)¹

Eduardo G. Abbott

Almost thirty years have passed since the World Bank established its Inspection Panel.² At the time, according to the Bank, it was, “*an unprecedented means for increasing the transparency and accountability of the Bank’s operations. This was a first of its kind for an international organization—the creation of an independent mechanism to respond to claims by those whom we are most intent on help in that they have been adversely affected by the projects we finance*”.³ When it was established, the Panel was a long-awaited breakthrough in the accountability of International Financial Institutions (IFIs), but also a tentative and experimental one. The Resolution provided that “*The Executive Directors shall review the experience of the inspection function established by this Resolution after two years from the date of the appointment of the first members of the Panel*”. In fact, the letters of appointment of the first Panel Members reflected this reality—they would be let go after two years if the Bank decided to terminate its Inspection Panel.⁴ The world has changed a great deal since the Panel was established - in science, technology, and politics, in advances (and setbacks) in the rights of individuals, and in the field of accountability. And the Panel has evolved—for better or for worse—during this period. In looking to the future, it is worth revisiting some of the issues and challenges that helped shape the IFIs’ first accountability mechanism in its early days, to ensure continued progress in accountability.

In considering the Panel’s early days, its establishment, structure, early operations, and especially the challenges it faced during this initial period to make it independent and credible to all parties, both inside and outside the World Bank Group, it is appropriate to reflect upon (a) expectations of the Panel; (b) the strive for independence; (c) the use of its operating and administrative procedure to ensure that independence; (d) changes in its enabling environment; and (e) the initial operating challenge it faced.

¹ Much has been written about the establishment and operation of the World Bank’s Inspection Panel. *See, e.g.*, Daniel Bradlow, “International organizations and private complaints: the case of the World Bank Inspection Panel.” *Virginia J Int Law*. 1993–1994; 34: 553–614., written shortly after the Inspection Panel was established. In fact, literally hundreds of articles and reports, and also books, have been written about the Inspection Panel, covering these and numerous issues regarding the Panel Members, its Secretariat, legal and administrative status, operations, results and impact at the specific project level, World Bank policies and practices and in the fields of international law and the accountability of international organizations.

² The World Bank’s Inspection Panel was established on September 23, 1992 by twin Resolutions of the International Bank for Reconstruction and Development (IBRD Resolution 93-10) and the International Development Association (IDA Resolution 93-6). In this article, both of these Resolutions are referred to as “the Resolution”, and the International Bank for Reconstruction and Development (IBRD) and the International Development Association (IDA) are collectively referred to as the “World Bank” or “the Bank”.

³ James Wolfensohn, President of the World Bank, in “World Bank. Accountability at the World Bank: The Inspection Panel 10 Years On.” Washington, DC: World Bank Group; 2003 at vii.

⁴ Resolution para. 27.

Great Expectations Amid Great Concerns

Academics and members of civil society had for years been demanding more transparency and accountability in Bank operations. They were delighted to learn of the Panel's establishment and anticipated that as an accountability mechanism it would improve the Bank's transparency and performance, while providing redress for people negatively affected by Bank-financed projects. More importantly they were encouraged by its precedent-setting impact on the rights of citizens under international law.⁵

However, the same academics and members of civil society had serious misgivings about the Bank's intentions. Was the Panel just "window dressing" in the face of external and internal pressures? What was the role of the Panel and its authority? How was selection conducted both of the Panel Members and the Executive Secretary, and how was their commitment to accountability measured? Statements by leading NGO representatives before the United States Congress effectively summarized these misgivings and concerns.⁶

World Bank Management, staff and even Members of the Board of Executive Directors (the Board) also had serious misgivings about the Panel. Although there were no articles or public manifestations of these concerns, they surfaced soon after the Panel began operations; sadly, many remain to this day.

Even supportive members of the Board shared some of civil society's concerns. Shortly after I was - to my big surprise - appointed as the Panel's Executive Secretary, I met with Executive Director Nicolás Flaño.⁷ He told me that his support for the Panel was twofold. First, he was acutely aware of the need for transparency and accountability in the operation of IFIs like the Bank. Second, he regarded the Panel as an instrument that would support/assist the Board in discharging its fiduciary duties. In supporting the Panel's establishment, he shared his experience visiting with other Executive Directors a Bank-financed problem project where, assisted by Bank staff, they were

⁵ See Hey, E. (1997). *The World Bank Inspection Panel: Towards the Recognition of New Legally Relevant Relationship in International Law*. Hofstra Law and Policy Symposium, 2, 61-74; See also Ibrahim Shihata, *The World Bank Inspection Panel: In Practice*, Oxford: Oxford University Press, 2nd ed., 2000, 261 -267.

⁶ 1994. Udall, Lori, Durwood Zaelke and David Hunter. "Statement of Lori Udall on Behalf of International Rivers Network, Friends of the Earth, Bank Information Center, Environmental Defense Fund, Greenpeace, Sierra Club." and "Statement of Durwood Zaelke, President and David Hunter, Senior Staff Attorney of the Center for International Environmental Law" in "World Bank Disclosure Policy and Inspection Panel: Hearing before the Subcommittee on International Development, Finance, Trade, and Monetary Policy of the Committee on Banking, Finance, and Urban Affairs—House of Representatives. 103rd Congress, Second Session (June 21)." Government Printing Office, Washington, DC.

⁷ Nicolas Flaño was the Executive Director from Chile, whose office represented a group of South American countries. More importantly, he was a member of a group of four "accountability champions" at the Board who supported the Panel's establishment. The other members of this group: Fritz Fisher (Germany), Eveline Herfkens (the Netherlands) and Aris Othman (Malaysia).

provided with considerable information about the project's technical aspects and problems. The project company provided a somewhat different version of the same issues, while local people offered yet another view of the situation. The visit had convinced him of the Board's need for independent expert advice when making decisions related to civil society complaints about Bank-financed projects. However, he was now concerned about the selection process of the first Panel Members, and whether the hard-fought/won Resolution would allow the Panel to carry out its duties with independence.

Mr. Flaño also mentioned many of his colleagues' concerns about the Panel. In the view of many, it was a political imposition by Part 1 (donor) countries, and had the potential not only to be detrimental to the sovereignty of borrowers, but also to give certain local groups such as requesters and NGOs political clout that they would not otherwise have. This, they felt, would alter the "political equilibrium" of the country in question.⁸ Another significant concern was that Panel investigations had the potential to substantially increase the cost of project implementation--although Bank policies apply to borrowers only to the extent that they are incorporated in the respective financing agreements. Later on, this concern resurfaced in Management's reactions to some requests for inspection.⁹

Many staff members and managers welcomed the establishment of a forum, run by independent experts, where they could defend themselves from allegedly unwarranted accusations about errors in the design, appraisal and implementation of Bank-financed projects. They felt that the Panel would bring an end to "irresponsible complaints". Others rejected the idea of what they saw as an external body "looking over their shoulders" in their professional work. In general, project staff were worried about the impact that negative Panel findings could have on their standing and careers in the Bank.¹⁰ Safeguards and legal staff appreciated that their comments about project activities and documents would be more carefully considered by their colleagues, now that affected people could demand compliance with the Bank's Operational Policies and Procedures.

The Bank's management, especially the President Lewis T. Preston, was cautiously welcoming of

⁸ For some, this was apparently a real concern. During a Board discussion a couple of years later, an Executive Director stated that in his country members of a Panel mission could be prosecuted for "traffic of influence". Although this statement was somehow lost in the tense discussion of a Panel recommendation, after the Board meeting, I met with this Executive Director in his office to explain the actual purpose and extent of Panel visits. At the end, I also referred to the immunities and privileges accorded to its officers and employees by the Bank's Articles of Agreement. He smiled and replied that his statement was made in the heat of the discussion and that only a lawyer would take issue with it.

⁹ See for example the cost of the borrowers' "action plans" regarding requests for inspection number 4 (Rondônia Natural Resources Management Project), 7 (Yacyretá Hydroelectric Project) and (Itaparica Resettlement and Irrigation Project). On the basis of these plans the Board of Executive Directors rejected the Panel's investigation recommendations.

¹⁰ The first interviewee during the eligibility phase of the Arun III request for inspection asked to bring a personal lawyer to the meeting with the Panel. I explained to her that, since every important step in the project cycle required multiple "clearances" (approvals) within the Bank, the Panel was looking at institutional, not personal, responsibilities so there was no reason to be concerned. She accepted my explanation.

the Panel's establishment. But, again, management revealed its sentiment in its responses to the first requests for inspection, which were quite aggressive, and sometimes clearly outside the procedures provided in the Board Resolution.

Staffing and Logistics—Independence Was Essential

The Members of the Inspection Panel and Executive Secretary were appointed on April 21, 1994 and started to work with the aim to open the Panel to the public on August 1 of the same year. The Panel Members had impressive personal, academic and professional backgrounds.¹¹ Although they did not know each other and were unsure of each other's commitment to the task ahead, after a few meetings they came together as a team with similar goals and aspirations. To operationalize the new, unprecedented accountability mechanism, they were to count only upon the part-time assistance of a staff member of the Legal Department, whom they had not met.¹²

On short notice, I was told to meet Mr. Ernst-Günther Bröder who was traveling to the Bank to assume the position of Chair of the Inspection Panel. When he arrived, he was taken aback. He had no office or secretarial support and was only able to work with an office and support provided by an Executive Director's office. I joined him in several meetings where we requested logistical and administrative support. We learned that the Secretary's Vice Presidency was to provide support to the Panel, as it did for Board Committees. Mr. Bröder found this arrangement unacceptable and requested a meeting with the Bank's President immediately.¹³ What he actually said was "tomorrow you wear your blue suit because we are seeing the President". He used this phrase every time that we had some problem that, according to him, required intervention by the Bank's President.

The following day, in his meeting with the President, Mr. Bröder demanded that the position of Executive Secretary (my position) be made full time, and that proper arrangements be made to ensure the Panel's administrative independence. When the President inquired what the Panel needed, Mr. Bröder replied: appropriate office space, two staff assistants and another professional staff to support the Executive Secretary.¹⁴ He was very emphatic that the Panel's total and complete independence was essential. He insisted that he had the full support of his fellow Panel members who wholeheartedly felt the Panel could not be regarded as independent from Management unless it controlled its own staff and budgetary resources. This, to him, was not negotiable.

¹¹ The first Panel members were: Mr. Ernst-Günther Bröder, Chairperson (Germany), Richard E. Bissell, appointed for three years (United States) and Alvaro Umaña-Quesada (Costa Rica), appointed for four years. After the first year, they rotated as Chairperson of the Panel.

¹² The first Executive Secretary was Eduardo G. Abbott (Chile), at the time Principal Counsel, Operational Policy in the Bank's Legal Department.

¹³ Actually, he said "tomorrow you wear your blue suit because we are seeing the President". He used this phrase every time that we had some problem that, according to him, required intervention by the Bank's President.

¹⁴ The first "recruit" of the Panel was Antonia Macedo, a lawyer from New Zealand, at the time a research assistant in the Legal Department. She later became the Panel's Assistant Executive Secretary.

Concerned of a possible “revolt” by the Panel members, Mr. Preston instructed then-Secretary and Vice President Mr. Timothy Tahane to provide the staff and logistical support the Panel required. Although the issues appeared resolved, the process of staffing the Panel’s Secretariat and obtaining offices and a file room with reliable, restricted access - viewed as essential safeguards to ensure integrity of the Panel process - took weeks.

In a subsequent meeting Mr. Preston agreed upon the administrative status of Panel Members. According to the Resolution, only the Chairperson would work full time, but the rank of his or her staff position required definition. As an experienced manager of international institutions, Mr. Bröder insisted that to be respected internally, the Panel Chair position needed to be equivalent to that of Senior Management. A ranking of Vice President was agreed, which benefited the Panel in terms of office space and administrative support, including staff assistants and logistics. Administratively, the non-full time Panel Members were considered Senior Consultants.

Proactive Interpretation of the Resolution

The Panel members had other pressing problems. Their role, status, procedures, and mission were defined by a Resolution, rather vague in many aspects, which was obviously the result of protracted and intense negotiations that had left several matters poorly defined. Although eventually the Operating Procedures reflected the Resolution, the Panel took the liberty of clarifying or adding important elements. Indeed, faced with external and internal misgivings about the Panel’s role and the commitment of its members, the Operating Procedures presented a unique opportunity to assert the Panel’s independence and add details to the Resolution to facilitate its operation and transparency.

Due to time constraints, there were negligible external consultations while drafting the Operating Procedures. The Panel’s opening for business was to occur shortly after its members took office and there were concerns that with broad consultations the drafting process would take a life of its own, potentially affecting the Panel’s ownership of its own Operating Procedures (OPs)¹⁵. The OPs included a detailed explanation of all steps in the Panel process, their requirements and timing. In addition, as elaborated below, to provide more transparency, the OPs introduced a number of other features not included but, in the Panel’s view consistent with, the spirit of the Resolution.¹⁶ To assert its independence and improve its effectiveness, the Panel introduced several innovations in its OPs.

¹⁵ In fact, when the Panel tried to update the OPs to reflect the 1996 and 1999 amendments to the Resolution, the Legal Department insisted that the amendments should be cleared by Board and Legal. The Panel Chair felt the proposed approval process was detrimental to the Panel’s independence and dropped this initiative.

¹⁶ Personally, I think that many features added by the Panel would not have survived a consultation process including Management, Civil Society, the Legal Department, and the Board.

The concept of “affected party” had been only loosely defined in the Resolution. The Panel agreed that “any group of two or more people” constituted a group eligible to submit a request for inspection. This definition and the confidentiality of requesters’ names was put to the test with the Panel’s first request for inspection submitted by two requesters who asked that their names remain confidential.¹⁷ Mr. Ibrahim Shihata, the Bank’s General Counsel--and main drafter of the Resolution--was asked by an Executive Director to issue an opinion regarding the request’s eligibility. He disagreed with the Panel’s definition of affected party.¹⁸ However, the Panel’s investigation recommendation was eventually approved, and the Panel’s “affected party” definition became a standard widely accepted by Independent Accountability Mechanisms (IAMs) across the world.¹⁹

The OPs also introduced a process for registering requests for inspection and a Registry of Panel activities regarding the processing of requests, both to be available to interested parties and the public.²⁰ The Registration Notice included an identification of the project, the requesters (unless they asked that their names remain confidential), a summary of the request--including reference to Bank policies that were allegedly violated-- and a notice to Management regarding the date when its response was due. The Registry recorded all actions in connection with processing requests, and relevant dates, including dates on which documents or notifications were received or sent by the Panel.²¹

Further, the OPs incorporated provisions to facilitate access and make the Panel process more transparent, including advice on how to prepare and submit requests, the ability of requesters and third parties to submit additional relevant information during the investigation process, and information throughout the process to requesters and the public.

The Panel processes for receipt of a request and launch of an investigation reflected the Resolution with small but, as later turned out, significant additions. For example, the OPs allowed the Panel to request additional information from the requesters and Management before acting upon a request or Management response; introduced a “preliminary review” for cases where the Panel

¹⁷ *Nepal - Arun III Hydroelectric Project : Request for Inspection (English)*. Washington, D.C. : World Bank Group. <http://documents.worldbank.org/curated/en/178721468775534974/Nepal-Arun-III-Hydroelectric-Project-Request-for-Inspection>

¹⁸ “Role of the Inspection Panel in the Preliminary Assessment of Whether to Recommend Inspection”. Legal Opinion of the Senior Vice President and General Counsel, dated January 3, 1995 issued in connection with the Panel’s “recommendation that the Arun III Project be investigated.” Ibrahim Shihata, *The World Bank Inspection Panel: In Practice*, Oxford: Oxford University Press, 2nd ed., 2000, 329 -337.

¹⁹ The “Review of The Resolution Establishing The Inspection Panel, 1996 Clarification Of Certain Aspects Of The Resolution” echoing the Panel’s Operating Procedures, provides: “It is understood that the “affected party” which the Resolution describes as “a community of persons such as an organization, association, society or other grouping of individuals includes any two or more persons who share some common interests or concerns.”

²⁰ See The World Bank Inspection Panel, *The Inspection Panel at the World Bank: Operating Procedures*, at 17 -21 and 64-65, (April 2014).

²¹ Given the communications technology available at the time, the publicity accorded to these documents was rather limited, but the Panel made efforts to have them widely distributed.

was not satisfied with the information contained in the request and/or Management response; and a made reference to an “initial study”, including a desk study and visits to the project site.

The Panel immediately realized the importance of site visits, not only to confirm the existence and eligibility of the requesters, but also to obtain *prima facie* information about the existence or possibility of harm, a key element for recommending an investigation. These visits became increasingly relevant as Management and Board members objected strongly to the eligibility of the requests submitted to the Panel.

In addition to interviews with staff, requesters, local authorities, file research, etc., the OPs included provision for contracting independent consultants, and visiting project sites and holding public hearings in the project area. The Board took the position that field visits related to inspections required the prior consent of the country’s Government, usually provided through the respective Executive Director, but country visits for eligibility purposes²² did not require prior approval.²³

The OPs reproduced paragraph 15 of the Resolution that provides that “*Panel shall seek, through the Vice President and General Counsel of the Bank, the written advice of the Bank’s Legal Department on matters related to the Bank’s rights and obligations with respect to the Request under consideration.*” The Panel questioned to what extent this advice would impact its independence given that the Legal Department was closely involved in project preparation and implementation, creating an obvious conflict of interests. The Panel decided advice would be sought with regard to the Bank’s legal relations with third parties, but not in connection with Managements’ obligations to follow its own Operational Policies and Procedures. To confirm this interpretation, the Panel was quite active in requesting legal opinions in relation to remedies available to the Bank, enforceability of contract clauses, etc. For example, the Panel requested an opinion about the remedies available to the Bank under credit agreements for a sector adjustment financing credit.²⁴ The respective legal opinion was the basis for rejecting Management’s claim that the word “project” in the Resolution did not include adjustment operations.^{25 26}

²² See Shihata 2000, *supra* note 19, 84 -85

²³ During a courtesy meeting announcing an “eligibility visit” of the country in question, the Executive Director stated that he had to consult the Government before granting his approval. I informed him that such approval was not necessary because the Panel members, as Bank officials, had the right to visit the project pursuant to the General Conditions incorporated in all Bank financing agreements. For projects under preparation, I added, the fact that Bank officials were not allowed to visit a proposed project area would negatively affect the processing of the loan. During my time at the Panel this issue was raised only a couple of times again.

²⁴ Request related to the Bangladesh: Jute Sector Adjustment Credit.

²⁵ The meaning of “project” in the Resolution as it stands now, was afterwards agreed in a meeting between the Panel and Senior Management and ratified by the 1996 Clarifications. The legal opinion was issued by Mr. Andrés Rigo, Acting VP and General Counsel on January 29, 1997.

²⁶ In any event, the Panel declined to recommend an investigation in that case since the Credit was canceled because, inter alia, of the policy violations claimed in the request.

In another instance, Management’s Response claimed that a request for inspection was ineligible because the amount remaining undisbursed of the two loans financing the project was equivalent to just 2.5%; the Resolution barred requests filed “*after the loan financing the project has been substantially disbursed*”, i.e., 95% of the loan amount.²⁷ The problem was that although both loans were financing the same project items, they were granted at separate times and had different amortization schedules. Legally, they were not one loan, and the remaining loan had disbursed less than 95%. The General Counsel’s opinion confirmed the Panel’s position.²⁸ The request was declared eligible, but not surprisingly, the Board rejected the Panel’s recommendation to investigate.

A Management Response to a request for inspection²⁹ included a statement to the effect that the World Bank Group concluded that a site close to the area to be inundated by the project “must be conserved in perpetuity for its spiritual, natural habitat, environmental, tourism and cultural values”. Adding that such “site will be preserved in its present state as per the agreement between the Government, IFC and IDA as an environmental off-set” pursuant to a Mitigation for Loss and Indemnity Agreements related to the project in question. The Panel was concerned about the “perpetuity” of such an agreement and requested a legal opinion, which confirmed that the provisions of such Agreements “do not give rise to a valid, binding and enforceable obligation” of the country in question to conserve in perpetuity the site “as an environmental and cultural offset”, adding that “the lack of any obligation to conserve [the site] in perpetuity” was “not inconsistent” with the provisions of OP/BP 4.04 on Natural Habitats.³⁰

A Change in Management — More Challenges

The Panel’s Chair and I were invited to meet the Bank’s new General Counsel in November 1999.³¹ It was a cordial meeting where he inquired after the Panel’s work and how the Legal Department could support it. Towards the end of the meeting, he told us that, as legal counsel for the Board, he intended to participate more actively in the Panel’s work, adding that the Panel would freely and independently establish the facts while he would decide whether there was any violation of the Bank’s rights and obligations regarding inspection requests. We were stunned. The Panel Chair flatly rejected this “proposal” stating he considered it an attempt against the integrity of the Panel process. Further, if needed, the Panel would ask for the Board’s and civil society’s support,

²⁷ See Brazil: Itaparica Resettlement and Irrigation Project, Case No. 9, Request No. 97/1, Management Response (Document dated Apr. 28, 1997).

²⁸ Shihata, 2000, *supra* note 17, 338 – 344.

²⁹ Bank Management Response to Request for Inspection Panel Review of the IDA-financed Uganda Third Power Project (Credit 2268-Ug) and the Proposed Bujagali Hydropower Project, paras. 141-142. At <https://www.inspectionpanel.org/sites/default/files/ip/PanelCases/24-Management%20Response%20%28English%29.pdf>

³⁰ Legal Opinion provided by Mr. Ko-Yung Tung, Vice President and General Counsel on December 14, 2001. (Unpublished).

³¹ Mr. Ibrahim Shihata was replaced by Mr. Ko-Yung Tung in November, 1999.

and the Panel would resign if Management supported this stance. The General Counsel retracted, saying that he was only exploring how the Legal Department could better support the Panel. In his view, an opinion of the General Counsel on whether policy violations occurred would carry much weight with the Board and the public. While I was in the Panel, the matter was never raised again.

Administrative Procedures—an Instrument to Support Independence

The Panel's Administrative Procedures (APs) were issued with the purpose of reaffirming its control over its administration. The APs set out rules for the Panel's management and internal operations, and also included several provisions related to its independence. These included:

- Article 10: “[T]he Panel is an independent forum. Any attempt to interfere with the functioning of the Panel for political or economic reasons or exert political or other influence on the Panel shall be made public.”
- Article 12: “[R]ecommendations and findings of the Panel shall be strictly impartial: only facts relevant to the Request or investigation under consideration shall be relevant to their decisions. Consideration of political factors shall be strictly prohibited”.
- Article 19: “[A] Panel member shall not participate in the preliminary review and investigation of any Request related to a matter in which he/she has a personal interest or had significant involvement in any capacity. A Panel member shall disclose to the Chairperson any circumstances, which might be deemed to affect his/her impartiality or independence.”
- Article 34: “[T]he Executive Secretary and the staff of the Secretariat shall be committed to the functions and role of the Panel. Any attempt by Bank member countries, non-governmental and other organizations, the Executive Directors, or Bank staff to interfere with or influence staff of the Secretariat in the discharge of their functions shall be reported to the Panel.”³²

Publication of the Panel's Procedures

Ten days before their distribution to Bank staff and the public, the Panel submitted its Operating and Administrative Procedures to the Board of Executive Directors. No comments or observations were received from Board members, and the Panel's authority to issue its own procedures was, thus, confirmed.

In 1996 the Board met to discuss the continuity of the Panel function, pursuant to Article 27 of the Resolution and issued some “clarifications” to the Resolution that made it consistent with the

³² Fortunately, none of these situations ever happened during my time at the Panel. Some Bank staff may have been upset with the Panel's existence or actions, but they always were professional and respectful in their dealings with Panel members and staff. The rules were clear and everyone seemed to respect them.

Panel's OPs.³³ Elements like the definition of affected party and project, the possibility of a preliminary review during the eligibility phase and the role of the Board, inter alia, were confirmed. Management was instructed to make significant efforts to make the Inspection Panel better known in borrowing countries, but not to provide technical assistance or funding to potential requesters.

Looking Back, the Panel in Retrospect

When the Panel started operations, it was anyone's guess whether it was going to be deluged with requests for inspection (legitimate or not) or was going to be ignored by affected people in developing countries because of lack of information of its existence. In the early- to mid-nineties, the internet was emerging and rarely available where Bank-financed projects were implemented. Within its limited means, the Panel tried to make people aware of its existence, but relied upon the Bank and civil society to help.

Its initial years were slow in terms of number of requests, but the very antagonistic reactions by Management and Board members to the initial requests for inspection were unexpected. From the very first request, Management started with *ex parte*, out-of-the-Resolution procedures, briefing Board members about requests without the Panel's presence, and questioning the eligibility, seriousness and legitimacy of the claims before the Panel acted upon them.³⁴

To the Panel, it appeared that Management was resorting to a three-pronged strategy to avoid investigations (i.e., accountability): (a) deny eligibility of the request; (b) almost always claim full compliance with Bank policies and procedures; and (c) when it appeared the first two tactics may not succeed, offer action plans to address the harm that the alleged policy violations had or would cause. These plans, in general, had several problems. First, because of the timeframe for processing the request, any plan had to be drawn up expeditiously, with little consultation. Second, in theory, the "action plans" could bring the Bank into compliance with applicable policies, but almost always at the expense of the borrower. Third, the lack of consultation created situations where affected people were dissatisfied with plans to address social and environmental problems that had become internationally known thanks to the Panel's involvement. This would bring more pressure (and expenses) on national and local governments. This, plus the unpleasant sensation of being "inspected" in borrowers' own territories, had significant impact in the Panel's appreciation among Board members representing borrowing countries, who tended to form blocks in opposition to Panel recommendations. It also created a difficult environment in Board meetings, where the usual

³³ The World Bank Inspection Panel, *Review of The Resolution Establishing The Inspection Panel - 1996 Clarification of Certain Aspects of The Resolution*, <https://www.inspectionpanel.org/sites/default/files/documents/ReviewResolution1966.pdf>.

³⁴ This practice was formally banned by the Board in the context of a second review of the Panel, paragraph 2 of the 1999 Clarifications, provides that "Management will follow the Resolution. It will not communicate with the Board on matters associated with the request for inspection, except as provided for in the Resolution."

decision-making by consensus was replaced by dramatic vote counting to reach a decision.³⁵ None of the Board members appreciated this unusual situation.³⁶

As a result of this environment in Board discussions, the Panel was often given conflicting messages. For example, when the Panel submitted its report and recommendation on a certain project, the Executive Directors “*agreed that before a decision could be made by the Board on the Panel’s recommendation..., the Panel should conduct an additional review to further substantiate the materiality of the damages and to establish whether such damages were caused by a deviation from Bank policies and procedures*”.³⁷ As instructed, the Panel submitted an additional review containing a detailed description of the “materiality of damages”, and an assessment of harm - quite apparent during the eligibility visit - that was similar to that of an investigation, but the request for inspection was not approved.³⁸ Understanding that such a detailed description of harm was a Board requirement, the Panel included a discussion on “preliminary evidence of material harm” in its subsequent report and recommendation, only to be criticized by Board members for including information (similar to that requested earlier by the Board) belonging to an investigation in an eligibility report.³⁹

Management’s “attack” strategy seemed to work: in the period following its first investigation, several recommendations for investigation were rejected, save for one that was limited to a desk study.^{40 41} The Panel retained some degree of oversight over the implementation of an action plan in one of the investigations it recommended, but that was rejected.^{42 43}

³⁵ For an excellent description of Board dynamics, especially regarding Panel matters, see Jonathan Fox, ‘The World Bank Inspection Panel: Lessons from the First Five Years’ (2000) 6 *Global Governance* 301 – 305.

³⁶ The Board resorted to “informal meetings” to discuss Panel cases, apparently to leave out of official records these contentious discussions. The official meeting would only take place after Board members agreed on the outcome. Sometimes Panel members were verbally mistreated in the course of their appearances before the Board.

³⁷ *Brazil: Rondônia Natural Resources Project*, Case No. 4, Request No. 95/03, (received June 16, 1995), <https://www.inspectionpanel.org/panel-cases/rondonia-natural-resources-management-project>

³⁸ *Id.*, at Additional Review Report (Dec. 8, 1995), <https://www.inspectionpanel.org/sites/default/files/ip/PanelCases/4-Additional%20Review%20%28English%29.pdf>

³⁹ *Brazil: Itaparica Resettlement and Irrigation Project*, *supra* note 27.

⁴⁰ *Nepal: Arun III Proposed Hydroelectric Project and Restructuring of IDA Credit*, Case No. 1, Request No. 94/1 (received Oct. 24, 1994), Investigation Report (June 21, 1995).

⁴¹ The Panel’s visit to the project area, in connection with the eligibility of the request, provided valuable information to substantiate the Panel’s investigation findings.

⁴² A lot has been written providing details about these and most other Panel cases, so there is no need to repeat them here, but I thought that it was worth mentioning the environment in which the original Panel Members operated until a “break” brought about by the 1999 Clarifications to the Resolution. After this break, Board consideration of some Panel recommendations have been contentious but, in my experience, never reached the level of animosity of the early days.

⁴³ There is a thorough evaluation of the Inspection Panel’s first ten claims, and a description of the claimants’ experiences, in Udall, Lori, “The World Bank Inspection Panel: The First Three Years”; Bank Information Center – October 1997.

Back to the Future: The Continuing Fight For the Panel's Independence

The Panel, as of this writing, has received 165 requests for inspection. It continues to be an accountability mechanism of worldwide reach. Despite often-criticized selection procedures, the Bank has recruited many very capable Panel members who, together with a dedicated Secretariat, have endeavored to maintain its standing as a leading accountability mechanism.

In retrospect, the push to establish the Panel came mostly from civil society and some enlightened member governments. The expectation that the Panel would create a “win-win” situation, opening the Bank to the communities it served, improving projects for stakeholders’ benefit, while making the Bank more accessible and transparent and Governments more responsive to their citizen concerns, has faded in many quarters. Borrowing countries, Board members, and staff have felt literally attacked by those whose livelihoods they work to improve. But these are just people raising their voices out of concern related to actual or potential harm, often the “unintended side effects” of development assistance.

In the interim, other IFIs have established accountability mechanisms that have expanded upon the Panel’s model by adding problem-solving alternatives and the monitoring of remedial actions.⁴⁴ Unfortunately, the Bank appears to have launched concerted efforts to undermine the Panel, by first weakening and later removing the position of Executive Secretary.⁴⁵ Subsequently, under the guise of introducing a dispute resolution function, the Panel has been deprived of managing its staff and budgetary resources--the very principle that initial Panel members fought for so diligently to ensure what is, perhaps, the most essential criterion for effective independence.

The fact that a third party--no matter how well intentioned and independent from Management she or he may be--is responsible for administering the Panel’s resources, evaluating its staff, making budgetary decisions and deciding who to hire and fire, would be simply unthinkable for the original Panel members and many of their successors. Was this change needed? Was the Panel’s management inefficient or ineffective? While some may point to minor adjustments that would help improve its administration, it is very difficult to understand this fundamental change in the Panel’s organization and responsibilities—to repeat, one that goes straight to the heart of what made the Panel independent.

The Bank has been widely praised for establishing and maintaining an unprecedented accountability mechanism that has had a major impact on the fields of accountability and

⁴⁴ There are now twenty members of the international Independent Mechanisms Network, an initiative promoted by Professor Edith Brown Weiss while she was Chair of the Inspection Panel.

⁴⁵ This decision took away the continuity of a function that most Panel Members have valued greatly over the years because it was the source of institutional memory and instrumental in ensuring the effectiveness of the Panel’s work, and lasting relations with external and internal stakeholders.

international law. There are again great expectations that the forthcoming review of the accountability function at the World Bank will restore the Panel's independence. Hopefully, the review will serve to respect and honor the hard-fought achievements of the Panel's early years.