
Disequilibrium in Development Finance: The Contested Politics of Institutional Accountability and Transparency at the World Bank Inspection Panel

**Benjamin K. Sovacool, Andria Naudé Fourie and
May Tan-Mullins**

ABSTRACT

This article examines the dynamic nature with which independent accountability mechanisms operate. Focusing on the World Bank, the authors argue that its Inspection Panel evolves according to internal and external pressures. In seeking to achieve equilibrium, and protect its authority and independence, the Panel has gone through several distinct phases: negotiation, emergence, protracted resistance, assertion of independence and authority, renewed tension, and contestation. The core novelty of the article is its application of concepts from outside the field of development studies — notably institutional accountability from the governance literature, and judicialization from the legal studies literature — to the topic of the Inspection Panel. Examining the Panel in this way demonstrates that accountability mechanisms represent a hybrid of transnational governance influenced by a range of actors including project-affected peoples, national governments, managers and development donors. Accountability in development finance is about competing interests as well as competing conceptions and expectations of accountability. In such a complex and multi-scalar system, the Panel is not only concerned with delivering well-researched investigation reports; it is also an entity seeking to ensure its own survival, as well as an arbiter of its own brand of legitimacy and accountability.

INTRODUCTION

Independent Accountability Mechanisms (IAMs) make it possible for citizens and communities to challenge decisions made by multilateral development banks (MDBs) in the context of their operations and projects. IAMs contribute to holding MDBs accountable for their decisions through independently administered processes intended to provide affected people with access to recourse and possible redress (Hunter, 2003; Hunter and

The authors would like to thank the anonymous peer reviewers for their constructive comments.

Development and Change 50(4): 867–895. DOI: 10.1111/dech.12427

© 2018 The Authors. *Development and Change* published by John Wiley & Sons Ltd on behalf of Institute of Social Studies.

This is an open access article under the terms of the Creative Commons Attribution-NonCommercial-NoDerivs License, which permits use and distribution in any medium, provided the original work is properly cited, the use is non-commercial and no modifications or adaptations are made.

Udall, 1993; World Bank, 2009). Indeed, as Bradlow (1993) and Hey (1997) argue, the creation of IAMs — with the Inspection Panel (IP) at the World Bank being the first such mechanism — represents a watershed moment in international legal jurisprudence since it establishes a new forum where ‘private actors’ who are in a non-contractual relationship with an international organization ‘can hold [the organization] directly accountable for the consequences of its failure’. Moreover, Zalberg (2012: 2) suggests, in the creation of IAMs, the integration of principles such as justice or sustainability in development practice is ‘an imperative rather than an aspiration’.

Theoretically, IAMs have the potential to improve internal governance in terms of ‘vertical accountability’ between staff and management or management and Executive Boards, and ‘horizontal accountability’ between MDBs and external stakeholders, as well as increasing external legitimacy (Naudé Fourie, 2016; Shihata, 2000; Woods and Narlikar, 2001). By executing their mandates — extending to functions such as problem solving, fact finding, compliance review, policy advice and monitoring (Bradlow and Naudé Fourie, 2011) — IAMs can spotlight missing or inaccurate information, uncover flaws in project risk assessments and designs, highlight institutional non-compliance with operational policies, and enlighten MDB management on structural issues and project-related problems. The World Bank’s IP in particular does this by expanding existing check-and-balance mechanisms so that external concerns can reach the Executive Board of the Bank directly without interference, and by creating a public record of how well the institution is complying with its own safeguards (Shihata, 2000; Sovacool, 2013).

If IAMs such as the World Bank’s IP have such potential, how do they actually perform in practice? Is the narrative of a benign, progressive IP battling against a malignant, oppressive World Bank Group (WBG) overly simplistic and at times misleading? Questions about the effectiveness of the IP, and IAMs in general, have long been part of a larger debate about the accountability and legitimacy of MDBs and other intergovernmental actors (Ananthanarayanan, 2004; Carrasco and Guernsey, 2008; Circi, 2006; Nurmukhametova, 2006; Orakhelashvili, 2005). However, opinions about effectiveness remain mixed and definitive answers seem elusive. Such elusiveness arises largely because, for stakeholders, ‘effectiveness’ is generally understood to entail the alignment of specific aims with concrete outcomes, whereas in reality they hold conflicting expectations as to which accountability outcomes IAMs should realize.

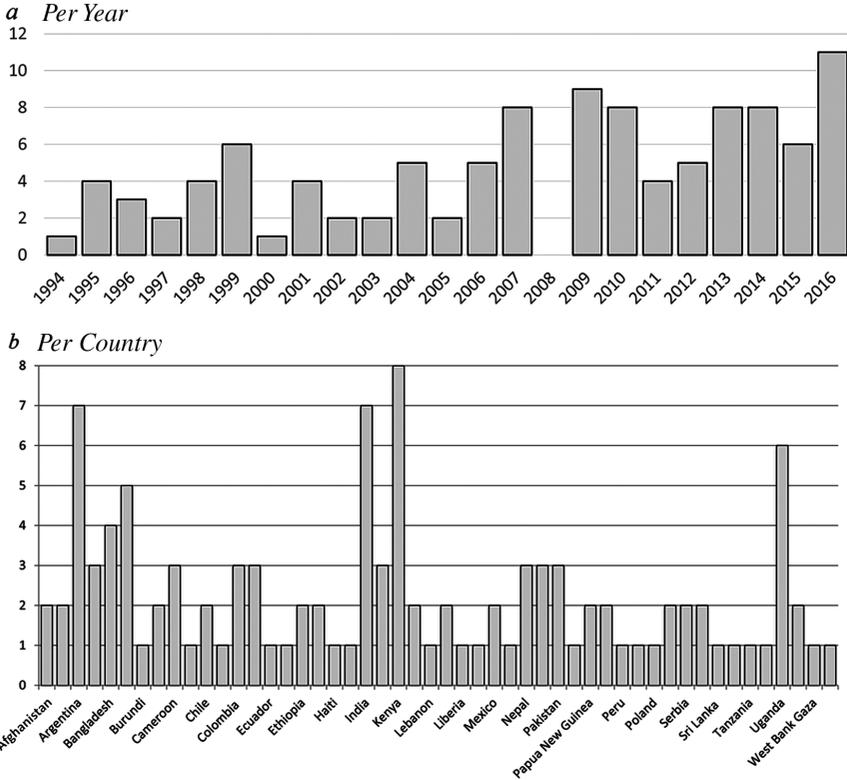
In this article, we assess whether the World Bank’s IP is effective at realizing the accountability-related objectives for which it was originally created. The core novelty of the manuscript is its application of concepts from outside of development studies — notably that of institutional accountability from the governance literature, and that of judicialization from the legal studies literature — to the topic of the IP. We explore the dynamic nature of the institutional context in which the IP operates, as well as its body of

practice over time. In contrast to a simple storyline of a ‘good’ IP struggling against a ‘bad’ WBG, this article argues that, in the quarter-century since its inception, the Panel has evolved and continues expanding in response to often competing demands and expectations of ‘internal’ stakeholder groups and ‘external’ stakeholder groups (typically, project-affected people and local as well as international civil society organizations representing specific interests). In seeking to achieve a dynamic equilibrium among these conflicting demands and expectations, while simultaneously fighting to protect its de facto institutional independence and authority vis-à-vis World Bank management and staff, we argue that the IP has gone through six distinct ‘phases’ in its institutional history: ‘negotiation’, ‘emergence’, ‘protracted resistance’, ‘assertion of authority’, ‘renewed tension’ and ‘contestation’.

In proceeding on this path, we intend to make two contributions, one theoretical, and one empirical. Theoretically, analysing the IP — what it does, how it executes its mandate and whether it is ‘effective’ — offers a unique chance to explore a new, hybrid form of governance involving IAMs that operate transnationally according to ‘quasi-judicial’ principles (Bradlow and Naudé Fourie, 2013; Kingsbury et al., 2005; Naudé Fourie, 2009, 2012). Tignino (2016) notes that quasi-judicial bodies such as the IP are intended to both help resolve ambiguity and uncertainty by reducing transaction costs and also improve compliance and thus legitimacy. Such bodies can also promote ‘pluralized normativity’ in seeking to influence a broader range of stakeholders (d’Aspremont, 2011). The World Bank IP particularly reflects principles of decentralized, ‘citizen-driven’ accountability attempting to create more responsive systems of redress for people harmed by projects (Bradlow and Naudé Fourie, 2013; Lewis, 2012). In sum: examining the World Bank’s IP offers a rare chance to test the efficacy of an evolving form of transnational governance, while also gathering insight about the dynamics at play within the pluralist and complex development context in which bodies like the IP operate.

Additionally, the article makes an empirical contribution by focusing on the World Bank and the growing body of practice of the IP. From 1994 to 2016, the Inspection Panel received 116 ‘cases’ (or ‘Requests for Inspection’) as Figure 1 illustrates. This number may not appear very high when compared to the case load of most judicial bodies, but considering that a Request can only be filed by groups of affected people (indeed, it is not uncommon for a Request to be accompanied by thousands of signatures of individuals supporting it) and that those 116 cases have originated from 50 countries, the significance of this body of practice becomes clear. Therefore, developing deeper insights about the operational processes and internal workings of the World Bank is of global importance for scholars of public policy and practitioners of development. Placing those insights in their broader ‘transnational development context’, moreover, is particularly timely: the complex and more complete narrative is becoming ever more salient as MDBs like the World Bank face increased pressure and com-

Figure 1. Overview of Number of World Bank Inspection Panel Cases Received, 1994–2016



Source: compiled by the authors.

petition from new entrants in the development finance market (Bradlow, 2011).

RESEARCH METHODS, CASE SELECTION AND THEORETICAL FRAMEWORK

The body of practice of the World Bank’s Inspection Panel (that is, cases filed at the IP from 1994 up to the end of 2016) serves as the primary source of data for our case study. This in itself is a contribution, as it differs from case studies using secondary data (such as Sovacool, 2017a, 2017b; Wade, 2009) or assessments that focus on dominant individuals at the World Bank such as former President James Wolfensohn (Mallaby, 2004). Contrasted with publications from the IP itself (World Bank Inspection Panel, 2011, 2014, 2015, 2016), our analysis is also independent and without conflict of

interest. Our primary sources of data are therefore the archives and cases of the IP itself, supplemented with a critical review of the peer-reviewed literature.

The IP is part of a complex legal and institutional environment at the World Bank, which includes The Articles of Agreement of the IBRD and IDA — the constitutive treaties and associated rules and procedures underlying World Bank institutions — as well as various Operational Policies and Procedures, or OPPs, which are aimed at regulating the Bank's development-lending operations. According to Naudé Fourie (2015: 99), among the critical components of these OPPs are the WBG's 'safeguard policies', which are designed particularly to manage environmental, social and economic risks. The legal nature of the OPPs is disputed: internal stakeholders generally emphasize their non-legal and internal nature (Schlemmer-Schulte, 1999; Shihata, 2000), whereas external and public stakeholders often envision them as a form of potent institutional law (Alvarez, 2005; Boisson de Chazournes, 2005). Bradlow and Naudé Fourie (2013) remark that the OPPs add an additional layer of hybridity on top of the IP's dynamics, since they exist at the nexus between judicial and court institutions executing mandates of review, and citizen-driven institutions executing mandates of fact-finding and compliance.

The focus on World Bank-financed development projects, which in turn are subjects of IP investigations, is justified by the continued significance of the World Bank — not only because of the size of its development-lending portfolio, but also because of its influence on policy development. As Bignami (2016: 326) observes, the WBG is 'a leader among international development organizations ... among global administrative bodies, the WB is widely credited with having made some of the most far-reaching reforms in favor of civil society'. Even critics point out that the WBG 'is profoundly important infrastructure for the promotion of a rights-based approach to development' (Bugalski, 2016a: 3). Moreover, the World Bank's trajectory of civil society reform is fairly representative of other MDBs, and it arguably has the most comprehensive IAM (Bradlow and Naudé Fourie, 2011; Gartner, 2013; Kingsbury, 1999).

The key theoretical framework guiding interpretation of our data is that of 'institutional accountability'. Although it is not the purpose of this study to exhaustively explore the topic of accountability, a few themes from the literature deserve a mention — starting with definitional aspects. Generally, accountability can be defined as the process by which 'actors record and disclose their behavior, in the broadest sense of the word, to an external audience (forum or principal)' (Schillemans and Busuioc, 2015: 193). Kim and Lim (2014) argue that accountability can also be conceptualized as consisting of three interlinked elements: responsibility, answerability and enforceability. The authors define 'responsibility' as referring to 'respective responsibilities of each actor or set of actors', 'answerability' denoting 'to whom to turn ... for a reasoned justification for actions', with

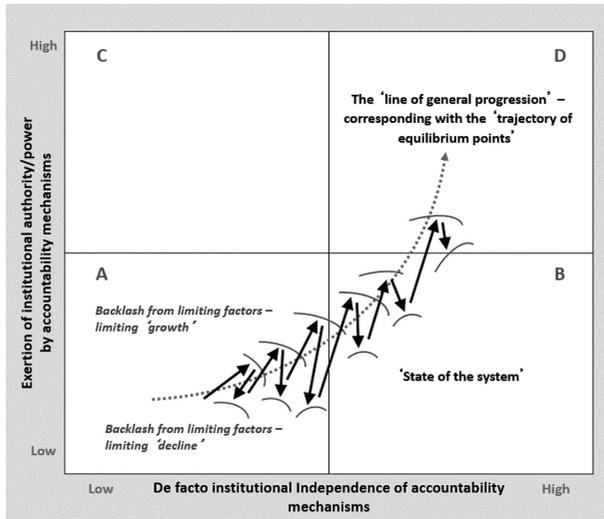
‘enforceability’ referring to ‘who ensures appropriate corrective or remedial actions are taken’ (ibid.: 4). IAMs such as the IP have potential to enhance all three elements within the context of MDB development-lending operations, although the ‘enforceability’ aspect remains, perhaps by intent, the weakest part.

Systems dynamics and constitutional legal theory provide some insight into factors driving institutional accountability. Naudé Fourie (2009, 2012) conceptualizes these matters in terms of the assertion of quasi-judicial authority or power and independence. This model of ‘quasi-judicial oversight or review’ incorporates both the nature of quasi-judicial power (what it entails, how it is performed) and its outcomes (the results to which it contributes). It reflects dynamics existing between the quasi-judicial body and broader political organs (in this case, the IP, the Executive Board and World Bank management, respectively). This model of quasi-judicial review is based on a hypothesis that there is a significant degree of functional equivalence between courts exercising a mandate of judicial review and IAMs executing a mandate of compliance review (ibid.). Much of this equivalence lies in how such review bodies execute their mandates, but it also echoes dynamics that exist between judicial or quasi-judicial review bodies and the legislative, executive and administrative political institutions within the system (Koopmans, 2003).

The model describes these dynamics in terms of two related variables: independence and authority. Firstly, judicial bodies strive to protect their de facto independence, in particular from internal influence — namely from political institutions whose decisions ultimately form subjects of their review. Secondly, judicial bodies tend to assert and expand their authority vis-à-vis those political institutions — a phenomenon that is sometimes described as ‘judicialization’ (Ely, 1980; Hirschl, 2004). These variables typically function in a positive or reinforcing feedback loop: if one variable changes, the other also changes in the same direction (Serman, 2000). Specifically, if a judicial body expands its degree of judicialization, the extent of its independence is strengthened. The opposite is also true: if influence weakens, independence is adversely affected as well.

Judicial bodies have an incentive to expand their de facto independence and influence (‘power’); however, they are unlikely to do so indefinitely, because of ‘limits’ to the ‘success’ of an expansion strategy due to backlash from various limiting factors (Anderson and Johnson, 1997). These narrow factors can include restrictions caused by institutional budgets; heavy caseloads; lack of cooperation from political institutions (for example, a refusal to enforce judgments or act on findings); and even actions specifically aimed at cutting a judicial body ‘down to size’ (by reducing its mandate, or by ‘packing the bench’) (Naudé Fourie, 2009). As a result of such limiting factors, the degrees of independence and judicialization of judicial bodies typically retract to lower levels, causing the polarity of change to switch from positive to negative.

Figure 2. A Model of Judicial Authority and Independence



Source: compiled by the authors.

On the other hand, decreases in independence and judicialization are likely to trigger backlash from alternative limiting factors. Notably, the credibility of the judicial body will suffer, which could make institutional cooperation less likely and could also have a negative impact on whether external parties view it as an effective avenue for obtaining recourse and redress. In order to survive in such circumstances, the judicial body would have to take actions that would, once again, reverse the polarity of the feedback loop, therefore increasing its degrees of independence and judicialization.

In a graphical representation of such behaviour over time (Anderson and Johnson, 1997; Sterman, 2000), quasi-judicial review can be observed to fluctuate between higher and lower degrees of independence and judicialization — what might be described as fluctuations between positions of ‘restraint’ and ‘activism’ (Lindquist and Cross, 2009; Roosevelt, 2006). To guarantee long-term survival and efficacy, a (quasi-)judicial body is likely to seek equilibrium within the system. If plotted as presented in Figure 2, this can be illustrated as a judicial body’s evolution along a line of general progression.

This model emphasizes dynamism of power and authority. In the words of Albie Sachs (former justice of the South African constitutional court):

It would seem, then, that no general theory requiring either judicial maximalism or judicial minimalism can usefully be advanced. There is a time to be cautious and a time to be bold, a time for discretion to be the better part of valour and a time for valour to be the better part of discretion. And it would appear that there is no logic intrinsic to the judicial function itself

that can tell us when the clock strikes for valour and when for caution. The question then becomes not one of whether but one of when. (Sachs, 2001: 90)

Generally, judicial bodies do not operate in a vacuum: their actions (and inactions) have sometimes unintended consequences. This might require strategic behaviours that further alter the complex system. These dynamics are at play throughout the history of the IP.

THE INSTITUTIONAL EVOLUTION OF THE WORLD BANK INSPECTION PANEL

Although the precise drivers behind the creation of the IP are dynamic and difficult to isolate historically, the need for such a mechanism has existed since the inception of the World Bank. When formed at the Bretton Woods Conference of 1944, the International Bank for Reconstruction and Development (IBRD) — which quickly became known as the World Bank — was intended to serve as an organization that would promote post-World War II reconstruction of European economies. However, the breakdown of the Bretton Woods exchange rate system created serious economic issues for many developing countries, especially those in debt, and the World Bank began to morph into its new mission of a funding institution (the International Finance Corporation) and a development and aid agency (the International Development Association). The mission of the World Bank Group now involved a portfolio spread across diverse tasks: post-conflict reconstruction, biodiversity, crime, and public participation in development planning, to name a few. This expanded mission generated significant tensions as WBG-financed projects encountered resistance from local communities or generated deleterious social and economic impacts (Sovacool, 2017a).

In this section, the story of the IP is presented in terms of the six evolutionary phases mentioned above: negotiation, emergence, protracted resistance, assertion of independence and authority, renewed tension, and contestation. Much of the Panel's history has been dealt with extensively elsewhere, especially the periods covered by the first four phases (Clark, 1999, 2003a; van Putten, 2008; Shihata, 2000); other works have focused on individual members of the IP, notably its chairs.¹ Although these individuals have exerted their influence over the shape and structure of the IP, we pay greater attention to the broader institutional dynamics and to recent developments reflected in the last two phases. We further illustrate how the IP both arose out of, and propagated, contestation.

1. The IP Chairs have been: Gonzalo Castro de la Mata (current), Eimi Watanabe (2013–14), Alf Jerve (2012–13), Roberto Lenton (2009–12), Werner Kiene (2007–09), Edith Brown Weiss (2003–07), Edward S. Ayensu (2002–03), Jim MacNeill (1999–2001), Alvaro Umaña-Quesada (1997–98), Richard E. Bissell (1996–97) and Ernst Gunther Bröder (1994–95).

Negotiation (1980s to 1993)

The idea of an IP began to germinate in the 1980s when non-governmental organizations (NGOs) criticized the WBG for violating its own policies regarding involuntary resettlement (policy dating from 1982), tribal peoples (also from 1982), and environmental impact assessment (from 1988) (Bignami, 2016). The Sardar Sarovar Dam and Canal projects on the Narmada River in India (known as the ‘Narmada projects’) were a flashpoint for these concerns, as they involved the forced relocation and resettlement of more than 120,000 people and resulted in significant environmental harm (Wade, 2011). The largest project, the Sardar Sarovar Dam, submerged 37,000 hectares of land and required the evacuation and resettlement of 245 villages of mostly indigenous peoples across the states of Gujarat, Maharashtra and Madhya Pradesh. The canal network necessitated the clearing of 80,000 ha of land for construction (Clark, 2003b). The WBG approved funding for these projects throughout the 1980s and continued to make disbursements even after civil society groups raised serious social and environmental concerns. By the early 1990s, the WBG was ‘under attack’ (World Bank, 2003: 2) and had become ‘a lightning rod for transnational protest’ (Fox, 2003: xi). Early NGO proposals called for the creation of an independent mechanism that would respond to and investigate complaints from project-affected peoples (Hunter and Udall, 1993; Wold and Zaelke, 1992).

As a response to the growing outcry, in 1991 the WBG President at the time, Barber Conable, created an independent commission to review the Narmada projects; the commission was to be headed by Branford Morse, a retired senior administrator from the United Nations Development Programme (UNDP), and Thomas Berger, a former Supreme Court Justice from British Columbia, Canada. In 1992, the commission released a report, informally known as the ‘Morse Commission Report’, and identified ‘serious compliance failures’ by the WBG as well as ‘devastating human and environmental consequences of those violations’ (World Bank, 2009: 3). Follow-up investigations across the WBG’s entire portfolio found that managers habitually failed to follow organizational goals of poverty alleviation and environmental protection (Werlin, 2003). The Wapenhans Report, the WBG’s own 1992 internal review of its lending practices (World Bank, 1992), concluded that the WBG was ‘suffering from a performance crisis’ with almost 40 per cent of projects scoring ‘unsatisfactory’ ratings, widespread defaults on loans and an overall ‘culture of approval’ that prioritized making loans at the expense of local communities and preserving ecosystems (Clark, 2003a). Part of the explanation was that managers were rewarded for moving forward as many projects as possible but were not penalized if those projects suffered from poor design or shortcomings in accommodating local peoples. The implication was that the WBG’s violations of its procedures symbolized a systematic failure on the part of Bank management (World Bank, 2009).

The idea for an Inspection Panel was not universally supported within the WBG, particularly amongst Bank management and Executive Board members from borrower countries, who identified the potential for placing blame for project failures on management and staff or borrowers. This issue, and the pressure it placed on the IP to placate both management and the Board (while also safeguarding at least a minimum degree of independence) would resurface time and again, as will be illustrated below.

Emergence (1993 to 1994)

The World Bank Executive Board established the IP in September 1993 as an ‘Independent Accountability Mechanism’ to commence operations on 1 August 1994. In the years that followed, different accounts emerged describing circumstances surrounding the IP’s establishment. Of particular interest in these accounts is the different emphasis they place on the conclusive role played by external versus internal stakeholder groups. Shihata (2000: 1–2) recognizes that internal ‘concerns’ ‘coincided with, and were influenced by sources inside and outside the Bank’, but nevertheless concludes that ‘the initial concern was a managerial one’. Other accounts emphasize ‘public pressure exerted by external stakeholders, notably, civil society organizations based in the United States and Europe’ as the decisive factor in the Panel’s establishment (Bradlow, 1999; Naudé Fourie, 2016: 84; van Putten, 2008). Hansungule criticizes Shihata’s account as an effort ‘to underplay the role of external pressures towards [the Panel’s] establishment’, which ‘is only grudgingly acknowledged and only in a few lines while attention is lavishly given to the Bank official’s roles’ (Hansungule, 2001: 148–49).

What these competing narratives reveal is that the IP would come to fulfil two often-competing roles: ‘to enhance the efficiency of the Bank’s operations and to meet the demand for greater transparency and accountability’ (Baimu and Panou, 2011). This dual purpose is reflected in formal descriptions of the Panel’s mandate. For example, the Bank has explained that the mandate of the IP was to provide a forum ‘for people who believe that they may be adversely affected by Bank-financed operations to bring their concerns to the highest decision-making levels of the World Bank’ (World Bank, 2009). The IP notes that it operates ‘as an independent forum to provide accountability and recourse for communities affected by Bank-financed projects, to address harms resulting from policy noncompliance, and to help improve development effectiveness of the Bank’s operations’ (World Bank Inspection Panel, 2011: 11). In the words of former WBG president, James Wolfensohn:

When the Board of Directors of the World Bank created the [IP, 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 helping that they

have been adversely affected by the projects we finance. By giving private citizens — and especially the poor — a new means of access to the Bank, it has empowered and given voice to those we most need to hear The Inspection Panel tells us whether we are following our own policies and procedures, which are intended to protect the interests of those affected by our projects as well as the environment. (Quoted in Sovacool, 2013: 75)

Although the idea was hotly debated, eventually the Board decided to establish the IP in order to ‘do the thing which board members just couldn’t do, which is travel out to the field, talk to NGOs, receive complaints, and ensure that management would do what it had promised to do’ (van Putten, 2008: 346).

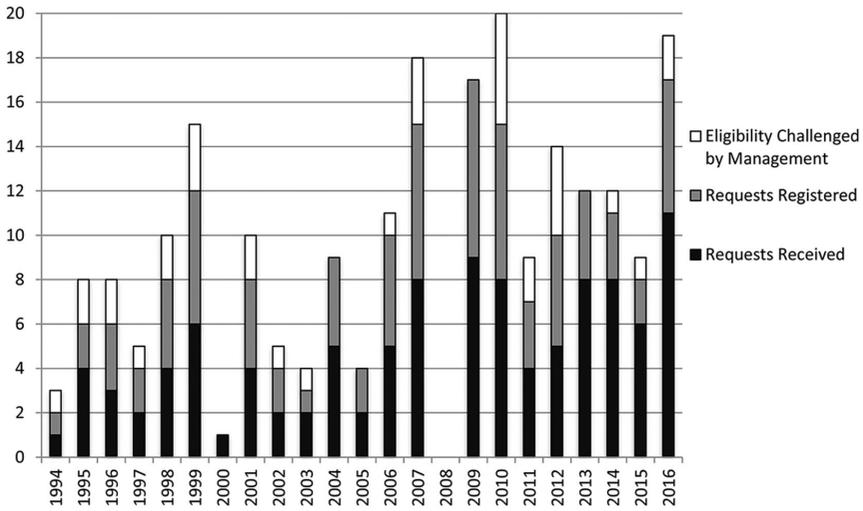
To assuage its member countries and borrowing governments, the WBG structured its IP to consist of three separate ‘circles’. The first was composed of three individual members of the IP, each from a different member country, appointed for a non-renewable five-year term. After completion of their terms, IP members could not be employed again within the World Bank Group. Members were selected on the basis of their ‘ability to deal thoroughly and fairly with the Requests brought to them, their integrity and their independence from Bank Management’ (World Bank, 2009). The second circle consisted of an Executive Secretariat and a small number of support staff created to advise and assist the members in executing their duties. The third circle consisted of internationally recognized experts to assist the IP with specific investigations, providing members with reliable information in fields as diverse as anthropology, forestry and hydrology.

The first IP investigation in 1994 concerned the proposed Arun III Hydro-electric Project in Nepal. The Nepal Arun III investigation demonstrated the potential power of the IP, and amplified the hopes, particularly of external stakeholders, that it would succeed (Bradlow, 1996). The IP’s investigation of the US\$ 800 million project revealed that the Bank had failed to observe proper requirements for relocation and resettlement, and that the project had tenuous economic justification given the fragile state of Nepal’s economy. After considering the IP’s report, (then) Bank President James Wolfensohn completely terminated the Bank’s support for the project. Interestingly, in their initial response to the Request, Bank management had essentially rejected the veracity of the Requesters’ claims and challenged the eligibility of the Request, a pattern that would reoccur over the coming years (Naudé Fourie, 2014).

Protracted Resistance (1995 to 1999)

After periods of negotiation and emergence, the next few years were tumultuous for the IP. The period following the Nepal Arun III investigation in 1995 up to the filing of the China Western Poverty Reduction Project Request in 1999 saw the re-emergence of intense and protracted resistance against the IP from within the WBG — often pitting borrower states (objecting to the

Figure 3. Overview of World Bank Management Eligibility Challenges, per Year (1994–2016)



Source: analysis by the authors.

Panel, since it was viewed as a means of investigating borrowers) against donor states (supporting the Panel as a means of holding management to account and improving development effectiveness). Bank management, on the other hand, strengthened its pattern of denying the eligibility and substance of claims in initial Requests, while simultaneously submitting action plans aimed at correcting shortcomings. As Figure 3 depicts, at least 60 per cent of the Requests filed between 1995 and 1999 were challenged by Bank management.

In practical terms, protracted resistance from multiple parts of the WBG meant that only two significantly limited investigations were launched during this time (Argentina/Paraguay: Yacretá Hydroelectric Project, and India: NTPC I Power Generation Project). Reflecting on this period, Clark (2003a: 3–4) notes that:

Bank management resented the panel’s scrutiny and strongly resisted being held accountable. Management responses to the Inspection Panel claims tended to deny policy violations and deny responsibility for problems identified in the claim (usually blaming the borrowing government for the problems instead). Management responses also tended to challenge the eligibility of claimants and propose ‘action plans’ as alternatives to panel investigations.

Although such thinking simplifies the storyline to a narrative of a heroic IP battling against a monstrous WBG, a notion this article challenges, it underscores how the Panel began losing credibility among external stakeholder groups. This loss of credibility is reflected in Dunkerton’s (1995: 228)

criticism that the panel was nothing more than a ‘public relations tool for the Bank and a political liability for borrowing nations’.

This period was replete with attempts to reform and salvage the IP. A first round of reforms spearheaded by internal actors and supported by external civil society actors started in 1995. This was followed by a more extensive round that concluded in 1999 and culminated in a set of ‘clarifications on certain aspects of the Inspection Panel Resolution’ (incorporated in the World Bank Operations Manual, BP 17.55, Annex A, B and C).² Amongst other things, clarifications affirmed the ‘importance’, ‘independence’ and ‘integrity’ of the IP and instructed project managers and staff to base their recommendations on the findings of the Panel, instead of pre-empting Panel investigations by submitting ‘Action Plans’ after a Request was filed.

Significantly, the clarifications reflected a compromise concerning the board’s authorization of investigations, which theoretically was on the basis of consensus. Management’s early submission of remedial action plans and the Panel’s extensive eligibility reports invariably resulted in discussions about the merits of the case, which were not based within a formal investigation. Under these circumstances, it became impossible to reach a consensus within the board, especially as those board members representing borrowers perceived the IP process as a smokescreen for investigating borrower conduct. The 1999 clarifications broke this stalemate by requiring early discussions to focus strictly on the procedural elements of the process. ‘If the panel so recommends’, ‘the board will authorize an investigation without making a judgment on the merits of the claimants’ request, and without discussion’, except with respect to ‘technical criteria for eligibility’.³

In practice, the Panel’s recommendation on the need for an investigation would also be considered on the basis of the board’s ‘no-objection procedure’ (a default whereby cases proceed unless the board objects, rather than needing approval on a case-by-case basis), thus limiting the scope for extensive debate within the board (Bradlow and Naudé Fourie, 2013; Shihata, 2000). The 1999 reforms set the stage for a new period.

Assertion of Independence and Authority (1999 to 2008)

If the reform initiatives of the previous period ‘set the stage’, the period from 1999 to 2008 can be viewed as one where the Inspection Panel ‘took to the stage’ with a marked degree of assertiveness. The first case marking the beginning of this period, China Western Poverty Reduction Project, served as a litmus test for the strength of the board’s commitments.

2. Accessible at: <https://policies.worldbank.org/sites/PPF3/Pages/Manuals/Operational%20Manual.aspx>

3. Accessible at: <http://ewebapps.worldbank.org/apps/ip/PanelMandateDocuments/ClarificationSecondReview.pdf>

During this time, the IP not only asserted its institutional independence, but also expanded its functional mandate beyond its original scope and remit by asserting its ‘quasi-judicial authority’ (Naudé Fourie, 2012). The IP’s influence increased, moving beyond the role of ‘fact-finding on behalf of the board’:⁴ examples included adopting procedural innovations (such as the practice of deferring its recommendations on investigations, allowing management more time to address problems raised in a Request); and employing expansive interpretation techniques, often with the effect of limiting the discretion of management in applying the OPPs (Bradlow and Naudé Fourie, 2013).

This period also marked a few prominent milestones in the history of the Panel, including the first instance in which the IP challenged the long-standing position of the World Bank on human rights (that is, that the Bank’s mandate, as per its Articles of Agreement, only extends to social, economic and cultural rights, not civil and political rights). The Panel explicitly questioned this argument in the 2001 Chad Petroleum Pipeline case, asserting that it ‘felt obliged to examine whether the issues of proper governance or human rights violations in Chad were sufficient to impede the implementation of the project in a manner compatible with the Bank’s policies’, and that the IP was ‘convinced that the approach taken in our report, which finds human rights implicitly embedded in various policies of the Bank, is within the boundaries of the panel’s jurisdiction’.⁵

The potential for tension remained embedded in both the Panel’s mandate and the way in which the Panel chose to execute it. The China Western Poverty Reduction case provides a noteworthy example. The Panel’s preliminary review and recommendation for a full investigation occurred in spite of Chinese objections (Shihata, 2000). The board authorized this investigation, as well as the IP’s full investigation and subsequent report that detailed various design shortcomings and non-compliance. This was hailed by many (external) stakeholders as a resounding victory (Clark, 2003a, 2003b). The response of Bank management, however, was highly critical of the IP for disregarding effectiveness and efficiency considerations (Bottelier, 2001; van Putten, 2008). The board’s adoption of the IP’s China Western Poverty Reduction investigation report also marked the formal withdrawal of China’s financing application to the Bank. China affirmed that it was: ‘[g]reatly concerned about what has become clear in this process — and which constitutes a great challenge facing this institution. Namely the fact that compliance policies have been interpreted by some to an extreme and used for political purposes. By such action the Bank’s mission — particularly its

4. See ‘Chad: Petroleum Development and Pipeline (2001)’, Inspection Panel Chair Address to the Board, p. 4, accessible at: http://ewebapps.worldbank.org/apps/ip/Pages/Panel_Cases.aspx

5. *Ibid.*

development effectiveness — has been jeopardized'.⁶ The Panel's relative 'success' during these years therefore coincided with mounting competitive pressure on the Bank — pressure which increasingly involved prominent borrowers such as China, India and Brazil.

Renewed Tension (2008 to 2013)

The IP's performance seems to have peaked around 2007–09, based on the number of Requests filed and registered, the number of cases in which management challenged the Request's eligibility for investigation, and the actual investigations performed by the Panel. Around the same time, tensions started to resurface surrounding the IP and its relationships with the Bank's executive board and management, as well as the Bank's external stakeholders. These tensions were reflected in an upsurge of challenges from management about the eligibility of Requests for investigation (around 64 per cent, on average, between 2010 and 2013). Increasingly, these eligibility challenges focused on what management saw as the lack of causal links between (alleged) harm and World Bank actions or omissions.

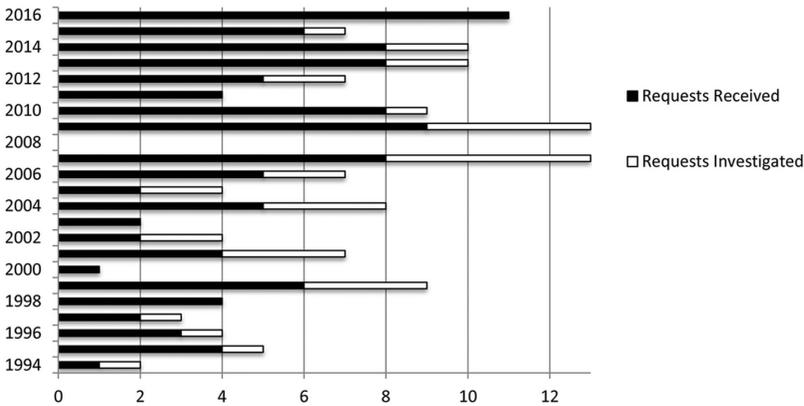
In the West Bank/Gaza Red Sea case, World Bank management expressed 'great concern [over] any suggestion that Bank support for studies, which in no way commit the Bank to go forward with financial support for a potential project, could be eligible for investigation', particularly since 'the mere generation and dissemination of knowledge in the form of the Study Program, which is not a Bank project, cannot result in direct material harm' (management response to request, para. v).⁷ The existence of a 'plausible causal link' between Bank actions (and omissions), and actual or potential harm also formed a major point of contention between Bank management and the IP in the Ethiopia Protection of Basic Services Project. The IP's investigation and management's subsequent recommendations triggered significant criticism within the NGO community. Inclusive Development International published a scathing report in 2015 accusing the Bank of having 'white-washed damning evidence of widespread human rights abuses in connection with its flagship program in Ethiopia' and shelving evidence obtained during the IP investigation 'in order to exonerate the bank and one of its biggest clients of responsibility for mass forcible population transfers that occurred between 2010–2013'.⁸

6. World Bank Press Release, 7 July 2000, accessible at: <http://go.worldbank.org/TX5D7PGU80>

7. Accessible at: http://ewebapps.worldbank.org/apps/ip/Pages/Panel_Cases.aspx

8. Accessible at: <http://www.inclusivedevelopment.net/world-bank-whitewashes-ethiopia-human-rights-scandal/>

Figure 4. Requests Received versus Requests Investigated (1994–2016)



Source: analysis by the authors.

During this period, Bank management became ‘extremely defensive’ and increasingly challenged the legitimacy of the IP’s findings (Bulgaski, 2016a, 2016b). The 2012 South Africa Eskom Investment case provides another notable example. In its response to the IP report, management rejected all IP findings of non-compliance and identified no corrective actions — a deviation from previous management responses (Naudé Fourie, 2014). Moreover, responding to the Panel’s comments on ‘systemic issues’, management noted that since such comments fell outside the Panel’s mandate, it would offer ‘no comment’ in response.

The period between 2008 and 2013 saw a significant expansion of the practice of deferring Panel decisions on whether a recommendation was warranted. On the one hand, the Panel’s practice of deferral can be construed as a reaction to external criticisms that the IP process did not provide effective remedies for project-affected people (Ananthanarayanan, 2004; Carrasco and Guernsey, 2008; Circi, 2006; Nurmukhametova, 2006; Orakhelashvili, 2005). By finding the Request ‘eligible’ for investigation (in terms of the ‘technical eligibility criteria’) but deferring its final decision on whether to recommend a full investigation, Bank management was afforded the opportunity to address the specific concerns of Requesters. However, such a deferral eroded the Panel’s institutional authority and its external credibility. After 2010, a marked decline in full IP investigations occurred (see Figure 4).

In 2012, the WBG launched a controversial review of its full suite of safeguard policies, noting that it needed to ‘better align the policies with the changing needs and aspirations of borrowers, the external context, and the business of the Bank’ (World Bank, 2012: 1). Also within this period, the IP announced that it would be reviewing its own Operational Procedures; a process that culminated in the adoption of revised procedures in early 2014 which changed the way the IP operated.

Contestation and Eroding Credibility (2013 to Present)

The new IP operating procedure (effective from April 2014) resulted in a number of significant changes that are indicative of contention and may erode the IP's institutional independence and authority.

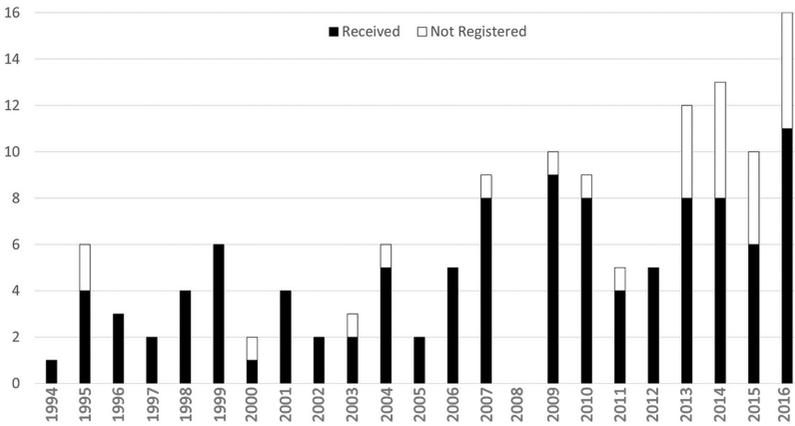
A first change concerns the adoption of an 'early solutions' pilot approach in 2013. For cases included in the pilot, on agreement with Requesters and management, the Panel would postpone registration (and thus, the determination of technical eligibility and the necessity for an investigation) in order to allow management to interact with Requesters and attempt to address specific concerns. As of late 2017, only two cases had been processed as part of the pilot approach — both ending in non-registration of the case on the basis that the Requesters' claims had been addressed to their satisfaction, and thus in the avoidance of an investigation. Several civil society organizations have expressed their concern with the procedural safeguards extended to Requesters, especially in light of the stark power imbalances that exist between Requesters and Bank management (Bugalski, 2016b).

Additionally, the avoidance of an investigation could mean that serious policy non-compliance would remain unchecked and might indeed result in missed opportunities for institutional learning. The first Pilot case — Nigeria: Lagos Metropolitan Development and Governance Project, filed in 2013 — would appear to substantiate such arguments. The case concerned, amongst other things, the forced eviction of a slum community and inadequate compensation for involuntary resettlement, issues that the Bank's policy on Involuntary Resettlement specifically aims to prevent. The Panel's preliminary (and invariably cursory) investigation into the facts revealed several indications of serious non-compliance with the policy on Involuntary Resettlement, including the retroactive design and implementation of the Resettlement Action Plan (policy stipulates that Resettlement Action Plans must be developed during the initial stages of the project, involving active participation of project-affected people). Despite the Panel commenting on such 'major shortcomings', the process ended in non-registration, even as the Bank was taking action to address Requesters' claims with regards to compensation (Bugalski, 2016a, 2016b).

A second change adopted during this period concerns the admissibility criteria applied by the IP when considering the initial registration of a case. Significantly, revised operating procedures include the requirement that '[a]t least one component of the project/program which is the subject of the Request' could 'be plausibly linked to the alleged harm' (Inspection Panel Operating Procedures 2014, para. 25[c]).⁹ Up to this point, such considerations would have formed part of the Panel's eligibility determination, following registration.

9. Accessible at: <http://ewebapps.worldbank.org/apps/ip/PanelMandateDocuments/2014%20Updated%20Operating%20Procedures.pdf>

Figure 5. Overview of Inspection Panel Requests Received but Not Registered (1994–2016)



Source: analysis by the authors.

Between 2013 and 2016, about 56 per cent of IP claims received were not registered, compared with an average rate of 16 per cent non-registration between 1999 and 2012, as Figure 5 depicts. The lack of a ‘plausible link’ between alleged harm and World Bank non-compliance continues to feature prominently among the reasons provided for non-registration, even though the Panel had, on several occasions in the past, asserted that the determination of a causal link between alleged harm and non-compliance was something that could only be reliably determined on the basis of an investigation (Naudé Fourie, 2016: 144–45). Furthermore, in the 2015 Haiti: Mining Dialogue Technical Assistance Request, the IP explicitly reversed its earlier conclusion on the interpretation of a ‘project’ as determined by the 2011 West Bank/Gaza Red Sea — Dead Sea Water Conveyance Study Program case.¹⁰ In the Haiti case, the IP concluded ‘that the issues of harm alleged in the Request may not be the subject of a Panel’s investigation, which is intended to present Panel’s findings on whether the Bank has complied with all relevant policies and procedures and whether the harms alleged in the Request have totally or partially resulted from Bank failure to follow such policies and procedures’ (Eligibility Report, para. 26).¹¹ While the Panel acknowledged that, in the Dead Sea Water case, it had ‘ruled that under some conditions [a project financed by means of a Bank-Executed Trust Fund] can be covered under the Panel’s Resolution and thus become eligible for an investigation’, it now ruled that ‘the subject of this particular Request [was] not eligible’ (Eligibility Report, para. 26).¹²

10. Accessible at: <http://ewebapps.worldbank.org/apps/ip/Pages/AllPanelCases.aspx>

11. Accessible at: <http://ewebapps.worldbank.org/apps/ip/Pages/AllPanelCases.aspx>

12. Ibid.

On the other hand, the 2017 Uganda Transportation Section Project Request serves as a vivid illustration of the continued need for a body such as the IP, and of the continued influence of external pressure. As a result of this case being filed at the IP, Bank management became aware of serious allegations of sexual misconduct by road workers associated with the project, and undertook concrete action to remedy the situation, including suspending and eventually cancelling the project (Investigation Report, v–vii) — even before the Panel investigated the claims.¹³ Nevertheless, the board authorized a full IP investigation into the project, while Bank management, in response to the Panel’s findings, arranged for the victims to receive support from the Bank’s Emergency Child Protection Response Program (First Management Progress Report, 30 March 2017).¹⁴

DISCUSSION: THE CONTESTED POLITICS OF INSTITUTIONAL ACCOUNTABILITY

A few patterns emerge when one considers the different phases of IP in their entirety. Firstly, Bank management and the board have varied in their reactions to the IP, ranging from discomfort to explicit dissatisfaction, to periods of greater institutional credibility with the board and, in particular, with management (Naudé Fourie, 2015). Secondly, at times, the IP has been able to assert its authority strongly — even confidently — vis-à-vis management and board. At other times, however, the Panel has operated in a defensive and/or reactive mode, taking explicit measures to defend its institutional independence or reacting to criticisms voiced by internal stakeholders (such as the need to take development effectiveness and efficiency matters into consideration) and external stakeholders (such as the need to ensure that the IP mechanism results in recourse and redress for project-affected people).

Indeed, when considering the IP’s behaviour over time, it would appear that the Panel fluctuates between periods of ‘activism’ and ‘restraint’. Temporally, the six phases of IP development demonstrate punctuated equilibria — distinct and often non-linear shifts — in the exercise of organizational power, marked by several ups and downs. To paraphrase from the analysis presented above: the *negotiation* and onset of the *emergence* phases were marked by a strong assertion of IP authority, which was followed by an extended struggle for independence and impartiality as the IP’s power waxed and waned from inside and outside the WBG during the period of *protracted resistance*. This changed during a prolonged period in which the IP asserted its *institutional independence and authority* — which, again, was followed by a period of *renewed tension*, resulting in a period of *contestation*. This last period, which has seen an erosion of the Bank’s safeguard principles and

13. Accessible at: <http://ewebapps.worldbank.org/apps/ip/Pages/AllPanelCases.aspx>

14. Accessible at: <http://ewebapps.worldbank.org/apps/ip/Pages/AllPanelCases.aspx>

a more myopic focus on protections for project-affected peoples, raises the question of whether the IP's own credibility — among internal and external stakeholders alike — is also being significantly eroded.

In executing its development function, the WBG has to balance a wide and diverse range of interests, many of which have the potential to directly clash. This potential for conflict is already reflected in the Bank's mandate, which, as Bradlow (2011) observes, is dual in nature. As an intergovernmental organization, the Bank's development mandate is public, originating from its member states (*ibid.*) and encompassing matters that are of 'common interest' (Hey, 2004). But there is also a commercial aspect to the Bank's mandate. As a participant of financial markets, the Bank has to maintain its excellent credit rating by doing what is expected of all commercial entities: growing revenue while reducing costs (Bradlow, 2011). The public and commercial aspects of the Bank's mandate do not always fit comfortably; the resulting potential for conflict is evident, for instance, in the criteria specified within the World Bank's performance scorecard (World Bank, 2014; Naudé Fourie, 2016).

Moreover, the potential for conflict between public and commercial interests has only deepened with the emergence of new global rivals such as the New Development Bank headquartered in Shanghai (led by the so-called BRICS — Brazil, Russia, India, China and South Africa), created with the purpose of 'mobilizing resources for infrastructure and sustainable development projects in BRICS and other emerging and developing economies' (Indian Ministry of External Affairs, 2014). The Asian Infrastructure Investment Bank (AIIB) is another rival, launched in 2014 and being championed by China, its largest shareholder. Together with the recently launched Silk Road fund, the AIIB is seeking to make China the premier Asian infrastructural financier (Kamal and Gallager, 2016).

To be sure, the AIIB's current committed capital is only US\$ 200 billion, which is a relatively small sum compared to projects funded by the Asian Development Bank and the World Bank. However, the existence of the AIIB, together with other emerging infrastructural financiers, directly challenges the WBG's ability to secure new projects in the Asia Pacific region, currently the largest market for infrastructural projects. Significantly, a major attraction of these new financiers is their commitment to provide loans with as few conditionalities as possible; they especially tend to be free from the type of conditionalities associated with transparency, good governance, and social and environmental safeguards that have become a hallmark of WBG-financed projects. As such, the WBG may feel particularly threatened by China's rising role as development lender, with commentators expressing a concern that Chinese practices challenge hard-won reforms in the areas of sustainable development, aid and official finance (Brautigam, 2011: 753).

WBG management might well have concluded that without substantial institutional reform — including significant adaptation of the OPPs and social and environmental safeguard policies — the WBG will be marginalized

and made irrelevant by these new players. Such a marginalization would, inevitably, reduce the geopolitical and economic influence yielded by the Bank and its key sponsors (the United States, Europe and Japan). The adoption of a new Environmental and Social Framework in August 2016 (preceded by an extensive consultative process involving internal and external stakeholders) signifies the World Bank's response to these pressures.

While it is too early to form conclusions as to how this framework will be applied consistently in practice — and interpreted by the IP — various commentators and civil society actors have expressed concerns, including worries that the strength of the IP's remit will effectively be weakened. The new safeguards framework comes with some strengths: it engenders greater flexibility and negotiability concerning applicable standards, which could lead to more culturally appropriate or acceptable projects. Project appraisal requirements are significantly reduced to expedite approvals, which can result in poverty-reduction efforts being implemented more quickly. The new framework also places expanded emphasis on borrowers' (and less on the Bank's) responsibility for assessing risk, implementing safeguards, and monitoring progress.

However, these benefits are achieved only by diluting other elements of power and authority. Institutional accountability has been shifted to other parties, the responsibilities of the Bank becoming more flexible and discretionary. '[A]s the Bank strives to recast itself as an attractive lender to governments and public-private partnerships', Bugalski (2016a: 2) warns, 'there are emerging signs that it will sacrifice its system of accountability to project-affected people that it has built — albeit on wobbly foundations, and imperfectly — over the past three decades'. Or, as a former Bank official remarked in 2015, 'I am saddened to see now that pioneering policy achievements of the bank are being dismantled and downgraded The poorest and most powerless will pay the price' (quoted in Chavkin and Anderson, 2015).

In other words, the new paradigm at the WBG could imply that social and environmental protections will not be allowed to obstruct an economic and development agenda. For its part, the mandate of the IP also reflects this duality — and the potential for conflict underlying it. Different stakeholders may have very different ideas and expectations of the role of the IP. Viewed from the perspective of internal stakeholders, the IP is a fact-finding body, acting on behalf of the board, with activities primarily aimed at strengthening existing management and governance structures, while improving development effectiveness by providing opportunities for institutional learning (Shihata, 2000). Borrowing countries, meanwhile, might view the IP as an indirect means to investigate their own (and not World Bank) activities. The application and enforcement of the Bank's operational policy framework are often seen as a major factor in increasing transaction costs — both financial costs and the costs of the bureaucracy involved in 'doing business with the Bank'. Donor countries, on the other hand, might be more inclined to support

mechanisms such as the IP to the extent that they contribute to improving lending quality and/or development effectiveness, in particular when such issues are promoted by civil society organizations in the affected countries (van Putten, 2008). Viewed from the perspective of external stakeholders, the IP exists primarily as a means to extend accountability towards affected parties ('horizontal' or 'bottom-up' accountability). This implies, firstly, providing project-affected people and their civil society representatives with an avenue for recourse and redress (Clark, 2003a; van Putten, 2008); and, secondly, providing interested parties (the 'broader public') with a window into the World Bank's development-lending operations and a greater 'voice' in Bank decisions (Bissell, 2001; Bissell and Nanwani, 2009).

This mosaic of interests is well represented in any typical IP case. Crucially, it leaves the Panel needing to find equilibrium among these conflicting interests, while simultaneously preserving its own long-term survival. Defining, and ultimately determining, the Panel's effectiveness under such circumstances is a complex endeavour. From the perspective of external stakeholders, the IP might be viewed as ineffective because of its limited mandate and because it can never be viewed as fully independent. 'Because the Panel is an arm of the Bank', Carrasco and Guernsey (2008: 578) opine, 'it is by definition an institution with a de facto World Bank bias and consequently acts with the interests of the institution in mind and not necessarily with the interests of the affected communities'. Internal stakeholders, on the other hand, might consider the IP to be ineffective because its limited mandate and entrenched institutional dependence affect its ability to independently judge policy compliance at the project level. Here, the Panel's attempts to incorporate community concerns might be perceived as facilitating undue political influences — something from which the Bank is expressly prohibited (van Putten, 2008; Woods, 2001).

Within this complicated judicial system, backlash is both a consequence of IP action and a mechanism for reform. As the IP attempts to assert and expand its independence and authority, it triggers factors which limit further assertion and expansion (growth-limiting 'backlash'). This affects the Panel's degree of independence and authority, culminating in pressure exerted by management, stemming from intensified competition from new lenders, or revised operating procedures that have the effect of limiting the Panel's mandate. Nevertheless, a prolonged reduction in the degree of IP independence and authority can also trigger factors (decline-limiting 'backlash') to halt the further weakening of IP independence and authority. This can include pressure exerted by civil society actors, or a reduction in cases filed at the IP due to a lack of credibility among prospective claimants. In sum, the IP illustrates how the dynamics of judicial oversight depend on a complex adaptive system between authority and independence, and demonstrates that this system can engender both conflict and the attainment of punctuated equilibria.

CONCLUSION

The World Bank Inspection Panel reminds us that accountability mechanisms represent a hybrid of transnational governance influenced by Requesters and project-affected peoples, national governments, Bank managers, and other development donors. In this way, the IP should not be viewed as a single type of entity. For its advocates, it is simultaneously a system of quasi-judicial oversight, a source of expounded normative standards, a review process for compliance, an arbiter of international human rights, and a facilitator of public participation in decision making. For its critics, the IP is a symbol of Western imperialism, a technique of legitimation for World Bank practices, and an obstacle to greater competitiveness and volumes of lending, all with an ineffective and limited mandate by design.

This creates a circulatory system of power that sees the organizational efficacy of the IP — its ability to retain legitimacy and control, and also to exert influence — oscillate. In such a complex and multi-scalar system, the IP asserts its power and independence but remains limited by countervailing pressures from the WBG (the board and management) and influenced by external factors such as perceptions among civil society groups and continuous efforts to improve accountability at other international financial institutions. A change in any one of these disparate conditions can lead to a shift in the organizational power and legitimacy of the IP. This narrative of complex dynamics and power struggles challenges the more conventional (mainstream) view of a heroic IP fighting to expose and reform a hegemonic WBG. The IP is not only about delivering careful, well-researched investigation reports which reveal World Bank failures to comply with safeguards. A second interpretation sees the IP as an entity seeking to ensure its own internal survival, an arbiter of its own brand of legitimacy and accountability. A third interpretation — even more critical — views mechanisms such as the IP as visible symbols meant to divert attention from the World Bank's governance failures and to both obscure and maintain an imperialist Western agenda (Vestergaard and Wade, 2013).

In addition to this interpretive flexibility about the nature of the IP, because of the punctuated equilibria its organizational power ebbs and flows, meaning there are limits to what it can accomplish. The IP must struggle against both the inertia of WBG operating practices and, at times, actively hostile, ambivalent or myopic managers. There is also a concern that improved accountability could come at the expense of project efficiency or even of the core financial relevance of the Bank itself: strengthened external accountability could increase the costs, administration and time of World Bank projects. According to this view, the Bank itself could become less relevant and competitive compared to other financial institutions if overly burdensome conditions are attached to its funding. These factors could explain why, even with the perseverance and commitment of dedicated stakeholders, the

IP has only investigated about 36 per cent of all the Requests it received between 1999 and 2016.

The example of the IP requires that we rethink what is meant by efficacy or effectiveness in institutional accountability. Even assuming that ‘effectiveness’ is closely related to the realization of specific objectives or outcomes (Shany, 2010), different stakeholders have very different ideas about what those outcomes should be, and which should enjoy primacy (Naudé Fourie, 2016). Since the IP’s inception, there have been conflicting expectations as to whether it should be working to strengthen the Bank’s internal governance structure or to expand the Bank’s external accountability towards project-affected people by securing an avenue for recourse, remedy and redress (Shihata, 2000).

Ultimately, our analysis suggests that effectiveness itself is a subjective, dynamic and contested concept, and the IP must meet conflicted priorities. The IP was born out of contestation and into a contested period of the WBG, and throughout its life it has seen multiple struggles over power, authority and legitimacy. The IP must remain effective not only in terms of ensuring its own existence, but also in promoting its agenda of holding the World Bank to account as well as protecting communities and, now, assisting the Bank in its mission of renewed competitiveness and disbursing loans. The IP must also be seen as legitimate by civil society and affected parties; in this endeavour, it may seek to galvanize support from its base by delivering ‘knockout blows’ to the Bank to keep its stakeholders engaged (Wade, 2009). Processes of legitimacy and accountability reflect not only competing priorities but also competing interpretations of effectiveness among different stakeholders — communities, shareholders, managers, the Executive Board, society as a whole. Development finance involves competing interests as well as competing conceptions and expectations of accountability.

REFERENCES

- Alvarez, J. (2005) *International Organizations as Law-makers*. Oxford: Oxford University Press.
- Ananthanarayanan, S. (2004) ‘A Crippled Inspection Panel’, *India Together* 1 July. www.indiatogether.org/wbinspect-human-rights (accessed 4 April 2018).
- Anderson, V. and L. Johnson (1997) *Systems Thinking Basics: From Concepts to Causal Loops*. Acton, MA: Leverage Networks/Pegasus Communications Inc.
- d’Aspremont, J. (2011) *Formalism and the Sources of International Law: A Theory of the Ascertainment of Legal Rules*. Oxford: Oxford University Press.
- Baimu, E. and A. Panou (2011) ‘Responsibility of International Organizations and the World Bank Inspection Panel: Parallel Tracks Unlikely to Converge?’, in H. Cissé, D.D. Bradlow and B. Kingsbury (eds) *The World Bank Legal Review: International Financial Institutions and Global Legal Governance*, pp. 147–72. Washington, DC: World Bank.
- Bignami, F. (2016) ‘Theories of Civil Society and Global Administrative Law: The Case of the World Bank and International Development’, in S. Casses (ed.) *Elgar Research Handbook on Global Administrative Law*, pp. 325–46. Cheltenham: Edward Elgar.

- Bissell, R.E. (2001) 'Institutional and Procedural Aspects of the Inspection Panel', in G. Alfredsson and R. Ring (eds) *The Inspection Panel of the World Bank: A Different Complaints Procedure*, pp. 107–26. The Hague: Kluwer Law International.
- Bissell, R.E. and S. Nanwani (2009) 'Multilateral Development Bank Accountability Mechanisms: Developments and Challenges', *Manchester Journal of International Economic Law* 6(1): 2–55.
- Boisson de Chazournes, L. (2005) 'The World Bank Inspection Panel: About Public Participation and Dispute Settlement', in M. Treves et al. (eds) *Civil Society, International Courts and Compliance Bodies*, pp. 187–204. The Hague: T.M.C. Asser Press.
- Bottelier, P. (2001) 'Was World Bank Support for the Qinghai Anti-Poverty Project in China Ill-Considered?', *Harvard Asia Quarterly* 5(1): 1–68.
- Bradlow, D. (1993) 'International Organizations and Private Complaints: The Case of the World Bank Inspection Panel', *Virginia Journal of International Law* 34: 553–614.
- Bradlow, D.D. (1996) 'A Test Case for the World Bank', *American University Journal of International Law & Policy* 11(2): 247–94.
- Bradlow, D.D. (1999) 'Precedent-Setting NGO Campaign Saves the World Bank's Inspection Panel', *Human Rights Brief* 6(3): Article 4.
- Bradlow, D.D. (2011) 'The Reform of the Governance of the IFIs: A Critical Assessment', in H. Cissé, D.D. Bradlow and B. Kingsbury (eds) *The World Bank Legal Review: International Financial Institutions and Global Legal Governance*, pp. 37–58. Washington, DC: World Bank.
- Bradlow, D. and A. Naudé Fourie (2011) 'Independent Accountability Mechanisms at International and Regional Development Banks', in T. Hale and D. Held (eds) *Handbook of Innovations in Transnational Governance*, pp. 122–37. Cambridge: Polity Press.
- Bradlow, D.D. and A. Naudé Fourie (2013) 'The Operational Policies of the World Bank and the International Finance Corporation: Creating Law-making and Law-governed Institutions?', *International Organizations Law Review* 10(1): 3–80.
- Brautigam, D. (2011) 'Aid "with Chinese Characteristics": Chinese Foreign Aid and Development Finance Meet the OECD-DAC Aid Regime', *Journal of International Development* 23(5): 752–64.
- Bugalski, N. (2016a) 'The Demise of Accountability at the World Bank?', *American University International Law Review* 31(1): 1–56.
- Bugalski, N. (2016b) 'An Evaluation of the Inspection Panel's Early Solutions Pilot in Lagos, Nigeria'. Asheville, NC: Inclusive Development International; Amsterdam: SOMO. www.inclusivedevelopment.net/wp-content/uploads/2016/06/Lagos-Early-Solutions-Evaluation.pdf
- Carrasco, E.R. and A.K. Guernsey (2008) 'The World Bank's Inspection Panel: Promoting True Accountability through Arbitration', *Cornell International Law Journal* 41(3): 577–629.
- Chavkin, S. and M. Anderson (2015) 'World Bank Breaks its own Rules as Millions Lose Land and Livelihoods', *The Guardian* 16 April. www.theguardian.com/global-development/2015/apr/16/world-bank-breaks-own-rules-indigenous-people-forced-off-land (accessed 4 April 2018).
- Circi, M. (2006) 'The World Bank Inspection Panel: Is It Really Effective?', *Global Jurist Advances* 6(3): 1–29.
- Clark, D.L. (1999) 'A Citizen's Guide to the World Bank Inspection Panel'. Washington, DC: Center for International Environmental Law.
- Clark, D.L. (2003a) 'Understanding the World Bank Inspection Panel', in D. Clark, J. Fox and K. Treakle (eds) *Demanding Accountability: Civil Society Claims and the World Bank Inspection Panel*, pp. 1–24. Lanham, MD: Rowman & Littlefield.
- Clark, D.L. (2003b) 'Singrauli: An Unfulfilled Struggle for Justice', in D. Clark, J. Fox and K. Treakle (eds) *Demanding Accountability: Civil Society Claims and the World Bank Inspection Panel*, pp. 167–90. Lanham, MD: Rowman & Littlefield.

- Dunkerton, K.J. (1995) 'The World Bank Inspection Panel and its Affect on Lending Accountability to Citizens of Borrowing Nations', *University of Baltimore Journal of Environmental Law* 5: 226–61.
- Ely, J.H. (1980) *Democracy and Distrust: A Theory of Judicial Review*. Cambridge, MA: Harvard University Press.
- Fox, J. (2003) 'Introduction: Framing the Inspection Panel', in D. Clark, J. Fox and K. Treacle (eds) *Demanding Accountability: Civil Society Claims and the World Bank Inspection Panel*, pp. xi–xxxii. Lanham, MD: Rowman & Littlefield.
- Gartner, D. (2013) 'Uncovering Bretton Woods: Conditional Transparency, the World Bank, and the International Monetary Fund', *George Washington International Law Review* 45(121): 128–29.
- Hansungule, M. (2001) 'Access to Panel – The Notion of Affected Party, Issues of Collective and Material Interest', in G. Alfredsson and R. Ring (eds) *The Inspection Panel of the World Bank: A Different Complaints Procedure*, pp. 143–66. The Hague: Martinus Nijhoff Publishers.
- Hey, E. (1997) 'The World Bank Inspection Panel: Towards the Recognition of a New Legally Relevant Relationship in International Law', *Hofstra Law & Policy Symposium* 2: 61–74.
- Hey, E. (2004) 'International Public Law', *International Law FORUM du droit international* 6: 149–62.
- Hirschl, R. (2004) *Towards Juristocracy: The Origins and Consequences of the New Constitutionalism*. Cambridge, MA, and London: Harvard University Press.
- Hunter, D. (2003) 'Using the World Bank Inspection Panel to Defend the Interests of Project-affected People', *Chicago Journal of International Law* 4: 201–11.
- Hunter, D. and L. Udall (1993) 'Proposal for an Independent Appeals Commission'. Washington, DC: Environmental Defense Fund and CIEL.
- Indian Ministry of External Affairs (2014) 'Sixth BRICS Summit: Fortaleza Declaration', 15 July. Delhi: Ministry of External Affairs, Government of India. www.mea.gov.in/bilateral-documents.htm?dtl/23635/Sixth+BRICS+Summit++Fortaleza+Declaration (accessed 4 April 2018).
- Kamal, R. and K. Gallagher (2016) 'China Goes Global with Development Banks', *Brettonwoods Project* 5 April. www.brettonwoodsproject.org/2016/04/20508/ (accessed 4 April 2018).
- Kim, T. and S. Lim (2014) 'Forging Soft Accountability in Unlikely Settings: The Prospects of Mutual Accountability in South–South Cooperation'. KOICA Working Paper 2014-1. Seoul: United Nations Development Programme.
- Kingsbury, B. (1999) 'Operational Policies of International Institutions as Part of the Law-making Process: The World Bank and Indigenous Peoples', in G.S. Goodwin-Gill and S. Talmon (eds) *The Reality of International Law: Essays in Honour of Ian Brownlie*, pp. 324–42. Oxford: Oxford University Press.
- Kingsbury, B., N. Krisch and R.B. Stewart (2005) 'The Emergence of Global Administrative Law', *Law and Contemporary Problems* 68: 15–61.
- Koopmans, T. (2003) *Courts and Political Institutions: A Comparative View*. Cambridge: Cambridge University Press.
- Lewis, K. (2012) 'Citizen-driven Accountability for Sustainable Development: Giving Affected People a Greater Voice — 20 Years On'. Independent Accountability Mechanisms Network. <https://www.opic.gov/sites/default/files/files/citizen-driven-accountability.pdf> (accessed 4 April 2018).
- Lindquist, S.A. and F.B. Cross (2009) *Measuring Judicial Activism*. Oxford: Oxford University Press.
- Mallaby, S. (2004) *The World's Banker*. New Haven, CT: Yale University Press.
- Naudé Fourie, A. (2009) *The World Bank Inspection Panel and Quasi-judicial Oversight: In Search of the 'Judicial Spirit' in Public International Law*. Utrecht: Eleven International Publishing.
- Naudé Fourie, A. (2012) 'The World Bank Inspection Panel's Normative Potential: A Critical Assessment, and a Restatement', *Netherlands International Law Review* 59(2): 199–234.

- Naudé Fourie, A. (2014) *The World Bank Inspection Panel Casebook*. The Hague: Eleven International Publishing.
- Naudé Fourie, A. (2015) 'Expounding the Place of Legal Doctrinal Methods in Legal-Interdisciplinary Research: Experiences with Studying the Practice of Independent Accountability Mechanisms at Multilateral Development Banks', *Environmental Law Reporter* 3: 95–110.
- Naudé Fourie, A. (2016) *World Bank Accountability: In Theory and in Practice*. The Hague: Eleven International Publishing.
- Nurmukhametova, E. (2006) 'Problems in Connection with the Efficiency of the World Bank Inspection Panel', *Max Planck Yearbook of United Nations Law* 10(1): 397–421.
- Orakhelashvili, A. (2005) 'The World Bank Inspection Panel in Context: Institutional Aspect of the Accountability of International Organizations', *International Organizations Law Review* 2: 57–102.
- van Putten, M. (2008) *Policing the Banks: Accountability Mechanisms for the Financial Sector*. Montreal: McGill-Queen's University Press.
- Roosevelt, K. (2006) *The Myth of Judicial Activism: Making Sense of Supreme Court Decisions*. New Haven, CT: Yale University Press.
- Sachs, A. (2001) 'Book Review: *One Case at a Time: Judicial Minimalism on the Supreme Court* by C.R. Sunstein; *By Due Process of Law: Racial Discrimination and the Right to Vote in South Africa 1855–1960*, by I. Loveland', *The University of Toronto Law Journal* 51(1): 87–90.
- Schillemans, T. and M. Busuioac (2015) 'Predicting Public Sector Accountability: From Agency Drift to Forum Drift', *Journal of Public Administration Research Theory* 25(1): 191–215.
- Schlemmer-Schulte, S. (1999) 'The World Bank Inspection Panel: A Record of the First International Accountability Mechanism and Its Role for Human Rights', *Human Rights Brief* 6(2): Article 1.
- Shany, Y. (2010) 'Assessing the Effectiveness of International Courts: Can the Unquantifiable be Quantified?'. International Law Forum Research Paper No. 03–10. Jerusalem: University of Jerusalem Law Faculty. papers.ssrn.com/sol3/papers.cfm?abstract_id=1669954 (accessed 4 April 2018).
- Shihata, I.F.I. (2000) *The World Bank Inspection Panel: In Practice*. Oxford: Oxford University Press.
- Sovacoool, B.K. (2013) 'Due Process and the World Bank's Inspection Panel', in B.K. Sovacoool *Energy & Ethics: Justice and the Global Energy Challenge*, pp. 66–89. New York: Palgrave Macmillan.
- Sovacoool, B.K. (2017a) 'Cooperative or Inoperative? Accountability and Transparency at the World Bank's Inspection Panel', *Case Studies in the Environment*. <https://doi.org/10.1525/cse.2017.000463>.
- Sovacoool, B.K. (2017b) 'Monitoring the Moneylenders: Institutional Accountability and Environmental Governance at the World Bank's Inspection Panel', *Extractive Industries and Society* 4(4): 893–903.
- Sterman, J.D. (2000) *Business Dynamics: Systems Thinking and Modeling for a Complex World*. Columbus, OH: McGraw-Hill Higher Education.
- Tignino, M. (2016) 'Quasi-judicial Bodies', in C. Bröllman and Y. Radi (eds) *Research Handbook on the Theory and Practice of International Law-making*, pp. 242–61. Cheltenham: Edward Elgar.
- Vestergaard, J. and R.H. Wade (2013) 'Protecting Power: How Western States Retain the Dominant Voice in the World Bank's Governance', *World Development* 46: 153–64.
- Wade, R.H. (2009) 'Accountability Gone Wrong: The World Bank, Non-governmental Organisations and the US Government in a Fight over China', *New Political Economy* 14(1): 25–48.
- Wade, R.H. (2011) 'Muddy Waters: Inside the World Bank as it Struggled with the Narmada Projects', *Economic & Political Weekly* 46(40): 44–65.

- Werlin, H.H. (2003) 'Helping Poor Countries: A Critique of the World Bank', *Orbis* Fall: 757–65.
- Wold, C. and D. Zaelke (1992) 'Establishing an Independent Review Board at the European Bank for Reconstruction and Development', *Duke Environmental Law and Policy Forum* 2: 58–96.
- Woods, N. (2001) 'Making the IMF and the World Bank More Accountable', *International Affairs* 77(1): 83–100.
- Woods, N. and A. Narlikar (2001) 'Governance and the Limits of Accountability: The WTO, the IMF and the World Bank', *International Social Science Journal* 53(170): 560–83.
- World Bank (1992) 'Effective Implementation: Key to Development Impact (Wapenhans Report)'. Washington, DC: World Bank. <http://documents.worldbank.org/curated/en/596521467145356248/Effective-implementation-key-to-development-impact-Wapenhans-Report>
- World Bank (2003) 'Accountability at the World Bank: The Inspection Panel 10 Years On'. Washington, DC: World Bank Group.
- World Bank (2009) 'Accountability at the World Bank: The Inspection Panel at 15 Years'. Washington, DC: World Bank Group.
- World Bank (2012) 'The World Bank's Safeguard Policies Proposed Review and Update Approach PAP'. Washington, DC: World Bank Group.
- World Bank (2014) 'World Bank Group and World Bank Corporate Scorecards'. Washington, DC: World Bank.
- World Bank Inspection Panel (2011) 'The Inspection Panel: Annual Report July 1, 2010 to June 20, 2011'. Washington, DC: International Bank for Reconstruction and Development/World Bank Group.
- World Bank Inspection Panel (2014) 'Annual Report July 1, 2013 to June 30, 2014'. Washington, DC: World Bank.
- World Bank Inspection Panel (2015) 'Annual Report July 1, 2014 to June 30, 2015'. Washington, DC: World Bank.
- World Bank Inspection Panel (2016) 'Lessons Learned: Involuntary Resettlement'. Washington, DC: World Bank Group.
- Zalberg, J. (2012) 'The World Bank Inspection Panel: A Tool for Ensuring the World Bank's Compliance with International Law?', *Macquarie Journal of International and Comparative Environmental Law* 8(2): 1–20.

Benjamin K. Sovacool is Professor at the Science Policy Research Unit (SPRU) at the School of Business, Management and Economics, University of Sussex, Brighton, UK. He serves as Director of the Sussex Energy Group and Director of the Centre on Innovation and Energy Demand which also involves the Universities of Oxford and Manchester. His main research interests pertain to science policy (with an emphasis on energy and climate change issues) and sustainability. He is the author of more than 380 refereed articles, book chapters and reports, and the (co-)author or (co-)editor of 20 books on energy and climate change topics.

Andria Naudé Fourie (corresponding author; naudefourie@law.eur.nl) is an Assistant Professor at the Erasmus School of Law, Erasmus University Rotterdam (EUR), The Netherlands. Andria has worked as a business consultant and academic researcher in South Africa, Europe and the USA, and holds degrees in law and business from the University of Pretoria and EUR. Her doctoral research focused on the World Bank's Inspection Panel.

May Tan-Mullins is a Professor in International Relations, Director of the Institute of Asia and Pacific Studies and Vice Provost for Teaching and Learning at the University of Nottingham Ningbo China (UNNC). She is series editor of the Palgrave Series on Asia and Pacific Studies. Her research interests are the political ecology of rising China, environmental and energy justice, poverty alleviation and building resilience for the poorest and most vulnerable. Her research projects include a comparative study of ‘Smart Eco-cities in Europe and China’ (2015–18), and the new project, ‘Poverty Alleviation Post Typhoon Yolanda’.