The World Bank Inspection Panel: Towards the Recognition of a New Legally Relevant Relationship to International Law

Ellen Hey
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TOWARDS THE RECOGNITION OF A NEW
LEGALLY RELEVANT RELATIONSHIP IN
INTERNATIONAL LAW

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I. INTRODUCTION.

The judicial or quasi-judicial instruments which individuals and groups have at their disposal for holding international organizations accountable for the manner in which these organizations exercise public policy competences are scant, to say the least. This situation is deplorable both from the point of view of the principle of government subject to the rule of law and from the point of view of the attainment of such public policy objectives as the protection of the environment.1 It negates the well documented role which both individuals and groups play in the achievement of national public policy objectives through challenging government actions that are contrary to their rights and interests in court.2 At the national level, the opportunities for individuals and groups

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1. The same holds true for other policy areas as, for example, the availability of education for all and the equal treatment of men and women. The examples referred to in this article, however, to a large extent are taken from policies for the protection of the environment. This is a reflection both of the catalytic role that environmental concerns played in the establishment of the World Bank Inspection Panel as well as of the author's background.


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to litigate their rights and interests vis a vis public authorities may leave a lot to be desired. By comparison, however, the opportunities for such litigation where public competences are exercised by international organizations, are almost non-existent.

In part, this lack of court access at the international level is explained by the dominant perspective in international law under which the relationship between an individual or group and an international organization is not recognized as a relationship which is directly relevant in law. The Inspection Panel established by the World Bank divers from the dominant perspective and does recognize this relationship as directly relevant in law. This essay assesses the extent to which the Inspection Panel procedure may contribute to the development of a new perspective in international law.

II. THE DOMINANT PERSPECTIVE IN INTERNATIONAL LAW.

That individuals and groups, on the one hand, and international organizations, on the other hand, have legal personality in international law no longer requires substantiation. In both cases the characteristics

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3. Two states, members of the European Union, whose rules on locus standi have been criticized for being too restrictive are Germany (see Chris Backes, Germany in Integrated System for Conservation of Marine Environments 77 (Karl van der Zwiep & Chris Backes eds., 1994)) and the United Kingdom (see Philippe Sands, Access to Environmental Justice in the European Community: Principles, Practices and Proposals, 3 Rev. Eur. Community Int'l Envtl. L. In addition to the rules on locus standi in the United Kingdom, the author considers the lack of rules in European Community law which harmonize the standards on access to justice in the member states as well as the restrictive rules on locus standi applicable to individuals and groups seeking access to the European Courts for purposes of having the Courts review decisions of the Community institutions.

4. See infra note 7.

5. The term 'World Bank' in this essay refers to both the International Bank for Reconstruction and Development (IBRD) and the International Development Association (IDA). For further information on the World Bank Inspection Panel see section 3 infra.

6. For further discussion see Bengt Broms, Subjects: Entitlement in the International Legal System, in The Structure and Process of International Law 383 (R. St. J. Macdonald & Douglas M. Johnston eds., 1986); Ian Brownlie, Principles of Public International Law 58-70 (4th ed. 1990) (subjects of international law); Id. at 553-602 (the protection of individuals and
of legal personality, of course, often are debated. However, the fact of the existence of legal personality for persons and international organizations no longer is in doubt.

The dominant perspective in international law, except in a few specific cases\(^7\), does not regard the relationship between these two types of legal personalities as directly relevant in law. Instead, it assumes that their interactions are subsumed in the legal relationship between the international organization and the state subject to which jurisdiction the individual or group finds itself. The dominant perspective also assumes that the interests of the individuals or groups and states, coincide and that those individual or group interests are thus well represented by that state. The dominant perspective moreover departs from the notion that the international organization has no public policy competences independent of its member states.

The dominant perspective of international law with its assumptions persists even though it belies emerging practices. The gap between those assumptions and practice\(^8\) means that the relationship between a state

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\(^7\) Examples of specific cases in which the relationship between an individual or group and an international organization is recognized as directly relevant in international law and in which judicial means for settling disputes are available are as follows. The relationship between an employee of an international organization and that organization (for further discussion see 2 C.F. AMERASINGHE, THE LAW OF THE INTERNATIONAL CIVIL SERVICE (2d ed. 1994)). The relationship between a company engaged in deep seabed mining and the Authority as laid down in Part XI of the (United Nations Convention on the Law of the Sea, 21 I.L.M. 1261) (Agreement Relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea, 33 I.L.M. 1309) (for further discussion see The Sea-Bed Area, in 1 A HANDBOOK ON THE NEW LAW OF THE SEA 577 - 832 (René-Jean Dupuy & Daniel Vignes eds., 1991) and (L.D.M. Nelson, The New Deep Sea-Bed Mining Regime, 10 INT’L J. MARINE & COASTAL L. 189 (1995)). In addition, there is of course the legal system of the European Community which, although it has its origins in international law, is increasingly developing towards a federal system in which the relationship between the Community’s institutions and groups or groups is recognized as directly relevant in law and in which some instruments for judicial review are available (for further discussion see HENRY G. SCHERMERS & DENIS WAELBROECK, JUDICIAL PROTECTION IN THE EUROPEAN COMMUNITIES (5th ed. 1992)).

\(^8\) David A. Wrath, Legitimacy, Accountability, and Partnership: A Model for Advocacy on Third World Environmental Issues, 100 YALE L.J. 2645 (1991); (illustrating that if not for the initiative of individuals and groups a forestry project in Sri Lanka, which was likely to have significant detrimental effects for the environment as well as the people dependent on that environment, probably would have been approved by the World Bank without the conduct of an environmental
and an international organization as defined by international law, no longer serves to satisfactorily regulate the relationship between an individual or group and an international organization.

In addition, the extent to which international organizations are bound by international law itself remains an issue of considerable debate. There is a lack of clarity about the standards by which the conduct of an international organization should be judged. For example, there is a long standing debate over whether the World Bank is bound by international human rights law (especially civil and political rights).

International law to some extent, however, does recognize non-governmental organizations (NGOs) and the role they may play in furthering such public policy goals as the protection of the environment. The wide spread observership status attributed to NGOs at meetings of international organizations concerned with environmental, and other, issues illustrates this development.

International law, however, does not reflect the notion that if international organizations, in fact, exercise public policy competences, the exercise of those competences should be subject to the controls and rules of law applicable to the exercise of governmental powers in national societies. As a result, when an international organization decides to fund a major development project with possible negative repercussions for individuals and groups, these individuals and groups, under international law, are not in a position to hold the organization accountable for the manner in which it exercises its public policy competences. Nor can the organization as a rule be held accountable before a national court for impact assessment and the determination of conditions seeking to avoid these detrimental effects); Daniel D. Bradlow, *International Organizations and Private Complaints: The Case of the World Bank Inspection Panel*, 34 VA. J. INT’L L. 553, 557-571 (1994); (illustrating that the Bank’s staff exercises powers independently of its member states); see also references to international organizations in *supra* note 6.


the manner in which it exercises its competences. States, by attributing public policy competences to international organizations, thus arguably may circumvent the procedures which, at the national level, otherwise may be available for controlling the exercise of such competences.

The dominant perspective assumes that states control the manner in which international organizations exercise public policy competences. The instruments of control at their disposal, however, are of a political nature. International dispute settlement procedures do not play a prominent role in the settlement of disputes between an international organization and a member state. Moreover, a member state of an international organization, especially if it is the beneficiary of the decision of the organization, may not be the most appropriate entity for holding that organization accountable.

III. AN ELEMENT OF A NEW PERSPECTIVE.

With the establishment of the Inspection Panel within the World Bank, the international situation described under the dominant perspective of international law has changed.

The decision to establish the Inspection Panel was taken by the Executive Directors of the International Bank for Reconstruction and Development (IBRD) and the International Development Association (IDA) in 1993. The three member Panel commenced its work in

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11. International organizations in the territory of their member states enjoy the privileges and immunities necessary for the fulfillment of their functions (see, e.g., U.N. CHARTER art. 105(1); Articles of Agreement of the International Bank for Reconstruction and Development, 2 U.N.T.S. 134. Note that in the case of the IBRD, as other international financial organizations which engage in extensive commercial activities, it is explicitly provided that they do not enjoy immunity from proceedings before national courts for such activities. See also PETER H.F. BEKKER, THE LEGAL POSITION OF INTERGOVERNMENTAL ORGANIZATIONS (1994); BROWNLE, supra note 6, at 697-98.

12. An exception is the dispute settlement regime contained in the United Nations Convention on the Law of the Sea. This system also applies to disputes which may arise between the Authority and its member states. See Dupuy and Vignes (eds.), supra note 7 at 777-95. The legal system of the European Community of course also encompasses procedures for the settlement of disputes between member states and the institutions of the Community. See SCHERMERS AND WAELBROECK, supra note 7.

September 1994. The Inspection Panel procedure applies to projects in which the IBRD or the IDA participates. There is some uncertainty as to whether the procedure applies to the Global Environmental Facility (GEF). This is because the Resolution establishing the Panel remains silent on this matter.

Requests for inspection may be submitted by a group of two or more people who believe that as a result of a violation by the Bank of its operational policies and procedures, their rights or interests have been, or are likely to be, adversely affected in a direct and material way. Such a group may be an organization, association, society or other grouping of individuals. Such groups of individuals may appoint a local representative or, in exceptional cases, a foreign representative. Before considering a request for inspection, the Panel has to find that the subject matter of the request previously has been brought to the attention of the Bank’s Management and that the Bank’s Management has failed to take appropriate follow-up steps.

15. The GEF was set up in 1990 to fund environmental projects. Its role was expanded at the 1992 Rio Conference (UNCED). 33 I.L.M. 1273 (1994).
16. The issue of whether or not the GEF is covered by the Resolution is especially important as this would mean that projects in which the United Nations Development Programme, the United Nations Environment Programme as well as other international organizations participate and which are financed though the GEF would also be covered by the Inspection Panel procedure. The Senior Vice President and General Counsel of the World Bank, Ibrahim Shihata, as reported by Ragazzi, has proposed a positive answer to this question Ibrahim F.I. Shihata, The World Bank Inspection Panel, (1994), referred to in introductory note by Maurizio Ragazzi, 34 I.L.M. 503 (1995).
17. “A violation by the Bank” includes “situations where the Bank is alleged to have failed in its follow-up on the borrower’s obligations under loan agreements with respect to such policies and procedures” Res. No. 93-10 (1993), para. 12, I.L.M. 520 (1995); Res. IDA 93-6 (1993), para. 13, 34 I.L.M. 520 (1995).
18. The term 'operational policies and procedures' refers to “the Bank’s Operational Policies, Bank Procedures and Operational Directives and similar documents issued before the series was started, and does not include Guidelines and Best Practices and similar documents and statements.” Id. The Bank’s operational policies and procedures relate to, among others, environmental impact assessment, involuntary resettlement, participation of non-governmental actors in projects, and indigenous peoples. Id.
19. Id.; Inspection Panel Operating Procedures, Aug. 19, 1994, para. 1, 34 I.L.M. 510 (1995). In his memorandum to the Executive Directors the Senior Vice President and General Counsel of the World Bank states that the criteria for standing “clearly exclude complaints by a person or group on behalf of the public at large (actio popularis)”; 34 I.L.M. 528 (1995).
The inspection procedure consists of two stages. The first stage is what might be called the establishment of jurisdiction and admissibility. At the end of this stage the Panel submits its recommendation, together with the response of the Bank's Management, to the Executive Directors. The recommendation should advise the Bank whether an investigation should be conducted. If the Executive Directors decide that an investigation should be conducted, the second, investigatory, stage commences. At the end of this stage the Panel submits a report to the Executive Directors. This report is to include findings as to whether, in the judgement of the Panel, the Bank has complied with its own policies and procedures. The Panel's report and the response to the report by the Bank's Management (which is to include recommendations in response to the Panel's findings) form the basis for the Executive Directors' decision on how to proceed with the project.

As of February 1996, four requests for investigations had been dealt with by the Panel. One request was declared inadmissible and thus not registered. Of the three registered requests one was not investigated upon the recommendation of the Panel, one had the investigation suspended upon the recommendation of the Panel, and one request for investigation was not pursued by the Executive Directors of the World Bank on the Inspection Panel (Jan. 3, 1995) 34 I.L.M. 525-34 (1995).


25. This case concerned the financing of a power project in Tanzania by IDA. Tanzania: Power Project, IPN REQUEST FOR INSPECTION RQ95/2 at http://www.worldbank.org.

26. This case concerned the financing of the Arun III Hydroelectric Project in Nepal by the IDA. Nepal: Arun III Hydroelectric Project, IPN REQUEST FOR INSPECTION RQ94/1 at http://www.worldbank.org. In June 1995 the Panel suspended the second phase of the investigation when it was satisfied that Nepal and the Bank's Management were doing all to abide by the applicable regulations. Progress of the Arun III Hydroelectric Project Investigation, IPN REQUEST FOR INSPECTION at http://www.worldbank.org.
Bank, contrary to the recommendation of the Panel.27

The establishment of the Panel is a response to repeated criticisms that the World Bank, in determining the conditions for loans or grants, did not follow its own internal policies and that procedures for holding the Bank accountable for the manner in which it exercises its competences should be developed.28 It is part of a broader reorientation of the World Bank.29 One might argue, in line with the dominant perspective in international law, that it is for the member states and in particular the state applying for a given loan or grant to ensure that applicable standards are implemented.

That line of reasoning in the case of the World Bank, and probably other international organizations, gives rise to two questions. The first question is the extent to which the World Bank sets the conditions for individual loans independently of its member states. Both external and internal reports illustrate that the Bank in practice operates rather independently of its member states when it comes to the setting of these conditions.30

The second question is whether member states are in a good position to hold the World Bank accountable. The answer to this question in turn depends on whether the member state is the state applying for a loan or one of the non-applicant other member states. The member state applying for a particular loan, on the one hand, is likely to be the only member state with expertise on the project. On the other hand, this state also has a direct interest in obtaining a positive decision from the Bank. The applicant member state may even perceive its interests as being

27. This case concerned the financing of the Rodonia Natural Resources Management Project in Brazil by the IBRD. Rodonia Natural Resources Management Project, IPN REQUEST FOR INSPECTION RQ95/3 at http://www.worldbank.org. This decision was taken in January 1996 subject to the provision that the decision would be reviewed, with the assistance of the Panel, within a period of 6-9 months. Id.


30. Bradlow, supra note 8, at 563-65.
served by not conducting an environmental impact assessment or by not developing a proper plan to resettle people displaced by a project. The other non-applicant member states, unless they are directly affected (for example in a transboundary context), on the one hand, are likely to have a more neutral perspective on a given project. On the other hand, considerations of reciprocity and lack of expertise may induce them not to hold the Bank accountable.

Practice has shown that in pertinent cases none of the member states of the World Bank were forthcoming when it came to holding the Bank accountable for the decision taken in individual projects. Such member state practices may have far reaching consequences. This is in part because of the influence which a decision of the World Bank may wield with third parties like other donors and private investors. These entities, unless at least a *prima facie* case to the contrary is made, are likely to assume that the support of the World Bank for a given project, means that the World Bank has assured itself that the project meets its own internal standards. These third parties thus, may be inclined not to reassess aspects of the project which presumably the World Bank has already considered.

It may be that individuals and groups, who directly experience the repercussions of a given project, are in a better position than member states to hold the Bank accountable for the manner in which it exercises its competences. This proposition places a heavy burden on those

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32. Similar considerations played a role in the establishment of the Second International Water Tribunal (IWT) in 1992. The cases brought before the IWT illustrate that a state may not be the best proponent of the legitimate interests of its residents when it comes to the construction of, for example, dams. Such projects involve the interest in further industrial development, often voiced by the state but also industry, the interests of large groups of people in sustaining their livelihood and the general interest in the protection of the environment. In such cases all interests need to be weighted, measures mitigating negative effects need to be developed and where rights are violated these need to be compensated for. The state in whose territory the project is being undertaken, as demonstrated by the cases brought before the IWT, is not always in a position to properly weigh all the interests involved. A pertinent example is the Tucurui dam, as well as other dams, built in the Brazilian Amazon region. The Tucurui dam especially serves the aluminium export industry, while the local population has been deprived of its livelihood and suffers other negative effects of the project without compensation. In those cases where multilateral donors, as the World Bank, are involved in such a project those organizations themselves have a responsibility to ensure the proper weighting of interests and the individuals or groups affected by the project may be in the best position to ensure that these organizations meet their responsibilities. For further information see *IWT FOUNDATION, DAMS* 11-130 (1994); Ellen Hey & Andre Nollkaemper, *The Second International Water Tribunal*, 22 ENVTL. POL’Y & L. 98-87 (1992). See also the Declaration of Amsterdam,
individuals and groups both from the point of view of the expertise required and the finances required. Moreover, individuals and groups will be in a position to bring to the Panel their requests for investigation only if they have access to information about the applicable standards, about the projects which the World Bank is considering, and about the Inspection Panel procedure. This would place a special responsibility on the Bank to inform local populations in developing countries because they are the most affected by decisions of the Bank. However, they are also relatively far removed from the culture of the Bank in terms of, for example, language and familiarity with the applicable regulatory system.

The Inspection Panel procedure is in line with the proposition that individuals and groups may be in a relatively good position to hold the World Bank accountable for the manner in which it exercises its public policy competences. It is also a significant step towards the development of an element of a new perspective in international law in the sense that it recognizes the direct relevance in international law of the relationship between an individual or a group and an international organization.

The Inspection Panel procedure itself, however, has traits which reflect both the dominant perspective in international law and the new perspective in international law. The traits that reflect the dominant perspective in international law result in the Inspection Panel procedure being weak when judged by the standard of government subject to the rule of law. First, the Panel bases its conclusions on internal regulations of the World Bank, as distinct from international law and the Inspection Panel procedure thus does not resolve the important debate about the extent to which the World Bank is bound by civil and political rights and other human rights law. Secondly, the conclusions of the Panel are legally non-binding decisions that the Bank's Executive Directors may choose to follow or not. Thirdly, the members of the Panel are

reprinted in id., at 120 (serving as the basis for the Tribunal's judgements).

33. If this is the case in the relatively homogenous European context, this is even more likely to be the case in the heterogenous context of the World Bank. Cf. Sands, supra note 3.

34. On the Bank's disclosure of information policy see WORLD BANK, WORLD BANK OPERATION MANUAL: BANK PROCEDURE BP17.50 (1993); Disclosure of Operational Information, 4 Y.B. INT'L ENVT'L. L. 872 (1993). See also Hunter and Ray, supra note 29, at 286 (doubling whether the Bank's new information policy, due to the large measure of discretion left to borrower states, will indeed effectively increase the Bank's transparency).


36. See supra note 9.

employees of the Bank and have an exclusive loyalty to the Bank.\textsuperscript{38} Fourthly, the Panel, on issues related to the Bank’s rights and duties, must rely on the advice of the Legal Department of the Bank\textsuperscript{39} instead of independent legal advice. Fifthly, the procedure is non-adversarial in character. This trait is illustrated by, among others, the fact that the requester is not entitled to react to the responses of the Bank’s Management to the request and the findings of the Panel.\textsuperscript{40} Sixthly, the Operating Procedures require the Bank’s Management to submit recommendations in response to the Inspection Panel’s findings \textit{after} an investigation,\textsuperscript{41} while it provides that the Inspection Panel is to pronounce itself on whether or not the Bank has complied with relevant policies and procedures.\textsuperscript{42} This would seem to imply that the Bank’s Management, instead of the Panel, is itself to pronounce on ways of repairing the wrong. Seventhly, the content of the Panel’s recommendations and reports, and the accompanying reaction of the Bank’s Management, are only made available to the requester, as well as the public, \textit{after} the Executive Directors have taken a decision.\textsuperscript{43} The Panel’s only discretion here is to make available to the requester any new material facts. It may not make available opinions or judgements, provided by the Bank’s staff, the Executive Directors or the authorities in the country where the project is located.\textsuperscript{44} Eighthly, the role of the state in whose territory the Bank-financed project takes place is not regulated either in the Resolution or in the Operating Procedures which only provide that this state shall be consulted.\textsuperscript{45} It is, for example, not determined that its submissions are to be made public. Lastly, \textit{in situ} inspections by the Panel are to take place only prior to the explicit consent of the state in whose territory the

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Those traits reflecting the dominant perspective of international law in fact ensure that the entity - the Bank - whose actions are being considered directly maintains a strong grip on the procedure itself and its outcome. In addition, they attribute a largely "extra-procedural" position to the member state in whose territory the Bank's-financed project takes place, and whose conduct may also be considered, albeit indirectly. This point is underscored by the lack of regulation of the role of the state in whose territory a project is located and the fact that no minimum period of time is provided for within which the member state in whose territory a project is located is to react to a request for in situ inspection.

Traits in the Inspection Panel procedure that reflect a new perspective in international law are as follows. First, the Inspection Panel procedure establishes an administrative, or quasi-judicial, complaint procedure for individuals and groups vis a vis an international organization. Secondly, the members of the Panel may meet directly with the requester and with other affected people. Thirdly, the Panel is free to employ its own investigatory methods including public hearings. Fourthly, during the investigatory stage, members of the public may provide the Panel with information.

Those new perspective traits provide the basis for a procedure which is unprecedented in international law. They make the procedure a relatively strong one when judged by the standard of quasi-judicial means hold international organizations accountable for the manner in which they exercise their public policy competences. A conclusion that can be supported by the fact that they enable the Inspection Panel to obtain information from a variety of sources and at its own initiative or at the initiative of others including members of the public and by the proviso

47. The conduct may be considered indirectly because what is directly under consideration is the alleged failure of the Bank to abide by the operational policies and procedures; however, this includes the Bank's alleged failure to follow-up on the borrower's obligations under loan agreements. See supra note 17.
50. Whether conditions are imposed on such participation in the investigation is unclear. Paragraph 50 of the Operating Procedures refers to "any person." Inspection Panel Operating Procedures, Aug. 19, 1994, para. 50, 34 I.L.M. 510 (1995). Yet, the Introduction to the Operating Procedures refers to "any person . . . who provides the designated Inspector(s) with satisfactory evidence that he/she has an interest, apart from any interest in common with the public . . . " Inspection Panel Operating Procedures, Aug. 19, 1994, Introduction, 34 I.L.M. 510 (1995).
that the main documents resulting from the procedure are to be made public at the end of each of its two stages.

IV. AN ASSESSMENT.

The establishment of the Inspection Panel procedure, on the one hand, can be regarded as evidence of a failure of the state system. It may also be regarded as the result of the failure of states to control the competences exercised by international organizations (organizations which these states themselves established). On the other hand, the procedure may be regarded as a logical consequence of the globalization of society in which the roles of individuals, groups, states, and international organizations, are no longer captured satisfactorily by the dominant perspective in international law. A new coherent perspective in international law has not yet emerged to replace the present dominant perspective. Importantly, however its possible elements are now being seriously discussed, at least in academic writings. One of the recurring elements in the debate over this new perspective is the need to incorporate directly into the international legal system the increased role of individuals and groups in international affairs. One way of doing that is to recognize that the relationship between an individual or group and an international organization is directly relevant in international law.

The Inspection Panel procedure recognizes that the relationship that exists between individuals or groups and an international organization is a relationship that may also be directly relevant in international law. To date, the practice of the Panel has been insufficient to reach conclusions about the extent to which the new perspective in international law, as reflected in certain traits of the Inspection Panel procedure, will prevail.

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51. See, e.g., CHRISTINE CHINKIN, THIRD PARTIES IN INTERNATIONAL LAW (1993) (illustrating the problems to which the traditional bilateral model which is still prevalent in international law, gives rise in an international society where the many factual relationships among states and between states and other actors are increasingly inter-linked and concerned with community or collective interests); Richard A. Falk, The United Nations and the Rule of Law, 4 TRANSNAT'L L. & CONTEMP. PROBS. 611 (1994) (illustrating that it is at least unclear which laws govern military operations undertaken on the basis of resolutions of the Security Council and advocating more emphasis on the development of rules of law binding on the United Nations).

over those traits that reflect the dominant perspective. Whether the new perspective will prevail, of course, depends on the work of the Panel itself.

The extent to which the Panel will be able to conduct its work and the authority ultimately accorded to its work, however, will be crucially dependent on the roles which the following actors play: the member state in whose territory the Bank’s-financed project is located, the Bank’s Management, and the Bank’s Executive Directors. Those three actors find their positions embedded in those traits of the Inspection Panel procedure that reflect the dominant perspective in international law. The manner in which they make use of the prerogatives accorded to them will determine the extent to which the procedure, which is weak when judged by the standard of government subject to the rule of law, will be able to ensure that individuals and groups indeed can hold the Bank accountable for the exercise of its public policy competences. These three actors hold the key to the extent to which the procedure will be able to fulfil the role in international law which similar procedures fulfil in national societies based on the principle of government subject to the rule of law. It is these three actors, more than any others, which will determine the extent to which the procedure, in practice, will contribute to the emergence of a new perspective in international law.