UNIVERZITA KARLOVA

Právnická fakulta

Barbora Obračajová

Stavba a struktura odpovědnosti mezinárodních organizací v oblasti mezinárodního rozvojového práva

Diplomová práce

Vedoucí diplomové práce: Prof. JUDr. Pavel Šturma, DrSc.

Katedra mezinárodního práva

Datum vypracování práce (uzavření rukopisu): 21. března 2017

CHARLES UNIVERSITY

Faculty of Law

Barbora Obračajová

Accountability Architecture of International Organizations of International Development Law

Master's Thesis

Supervisor of the Thesis: Prof. JUDr. Pavel Šturma, DrSc.

Department: of Public International Law

Date of submission: 21 March 2017

Prohlášení

Prohlašuji, že předloženou diplomovou práci jsem vypracovala samostatně a že všechny použité zdroje byly řádně uvedeny. Dále prohlašuji, že tato práce nebyla využita k získání jiného nebo stejného titulu.

V Praze dne 21. března 2017

Barbora Obračajová

Poděkování

Chtěla bych tímto vyjádřit své velké poděkování prof. JUDr. Pavlovi Šturmovi, DrSc., jenž mi nejen pomohl svými cennými radami a konzultacemi jako vedoucí mé diplomové práce, ale taktéž mi byl inspirací a mentorem v průběhu celých mých studií na Právnické fakultě.

Dále bych taktéž ráda poděkovala Katedře mezinárodního práva, na které mi bylo ctí působit jako pomocný vědecký pracovník.

List of abbreviations

AfDB	African Development Bank
AsDB	Asian Development Bank
CAIO	Committee on Accountability of International Organizations of the International Law Association
DAC	Development Assistance Committee of the OECD
EBRD	European Bank for Reconstruction and Development
IADB	Inter-American Development Bank Group
IAMnet	Independent Accountability Mechanisms Network
IBRD	The International Bank for Reconstruction and Development
IDA	The International Development Association
IDB	Inter-American Development Bank Group
IFC	The International Finance Corporation
IIC	Inter-American Investment Corporation
ILC	International Law Commission
IP	World Bank Inspection Panel
JIU	Joint Inspection Unit
MICI	Independent Consultation and Investigation Mechanism
MIGA	The Multilateral Investment Guarantee Agency
ODA	Official Development Assistance

OECD	Organisation for Economic Co-operation and Development
UN	United Nations
UNDG	United Nations Development Group
UNDP	United Nations Development Programme
UNGA	United Nations General Assembly
WB	World Bank (joint denomination for IBRD and IDA)
WBG	World Bank Group
SECU	Social and Environmental Compliance Unit
SRM	Stakeholder Response Mechanism

Table of Contents

1. Introduction

The range of activities of International Organization in the field of International Development Law (the "IDL") has been expanding throughout the past decades. This caused concerns on the setting thereof, as the International Organizations have been operating in legal surroundings that granted them the necessary privileges, but did not provide for sufficient accountability safeguards in order to preclude lawlessness. For this reason, the International Organizations have under pressure from its Member States and/or the public, or entirely by themselves committed to securing accountability through various mechanisms. These mechanisms altogether form the so-called "*accountability architecture*" and represents a plethora of advisory, oversight and quasi-judicial bodies as well as external audit functions. One of the components of this system under IDL is formed also by the international accountability mechanisms, which are quasi-judicial panels or entities that enable an individual (or a group of individuals) to seek remedies and reparation of a wrongful state directly against the International Organizations.

The present Paper seeks to answer the question of "*Is the current way of ensuring accountability of International Organizations of [IDL] for breaches of international obligations as well as its own internal regulation sufficient?*" The reasoning behind this question is an attempt to balance the need for institutional autonomy of International Organizations, which is vital for the exercise of their functions, and the necessary accountability concerns. The reason for putting the focus onto IDL is the enhanced interference of the respective International Organizations with the lives and livelihoods of the individuals on a regular basis. This led to the establishment of a detailed accountability architecture, which keeps evolving. Furthermore, the international accountability mechanisms thereof were a step towards overcoming the traditional state of lawlessness pertaining to the International Organizations. Nonetheless the international law does not award it with sufficient attention.

To these ends, the present paper firstly dwells upon the general notion of accountability and its subsystems, as well as upon the relation between accountability and responsibility of International Organizations. Here it seeks to give at least some guidance to the legal definitions, content and legal bases of these terms. Second chapter attempts to set the accountability concerns

into a broader context of the International Development System. To this account, it describes the main paradigmatic directions thereof and basic accountability designs with respect to the United Nations and the World Bank. The third chapter then dives deeper into the operating accountability mechanisms, which are, as stated above, an endemism of the field of IDL. It is aimed at finding the common features to the accountability mechanisms. This chapter also gives a brief description of the main particular models of accountability mechanisms in order to demonstrate the practice in this area. Last but not least section then provides a synthesis that should reflect the above and provide a basis for further analysis of this issue, be it in relation to IDL, or any other branch of public international law. Over the course of these deliberations, this paper touches upon numerous branches of Public International Law. It would be therefore neither conceivable, nor desirable to aspire to describe each of these to the greatest and appropriate detail. For this reason, many issues are only briefly described to the extent which serves the question this Paper seeks to ask.

1.1. International Development Law

1.1.1 International Development Law and International Development System

The IDL may be defined as the system of legal norms that govern the legal relations stemming from or existing within the International Development System. Other possible definition is "*a multidisciplinary mixture of certain technical aspects of international corporate practice overlaid with economics, political theory, history, and sociology.*" [1] International Development System is yet another notion that lacks proper definition. For the purpose of this Paper, it shall be understood as a system comprising of relations in between its subjects (as described below), driven by the objective of promotion of human development and alleviation of poverty or other adverse phenomena, which also forms the object of the IDL. It may be distinguished between bilateral and multilateral level of this system. On the bilateral level, the development assistance is provided directly from one State to another. In the multilateral system, it is facilitated by International Organizations.

---

[1] Sarkar, Rumu. *IDL: Rule of Law, Human Rights & Global Finance*. Oxford: Oxford University Press, 2009, ISBN 978-0-19-539828-1, preface, p. xvi.

The sources of IDL may be both sources pursuant to the Article 38 of the Statute of the ICJ, i.e. especially international conventions, international custom and general principles of law recognized by civilized nations.[2] Prominent role with respect to the International Organizations of the International Development System are the constituent instruments thereof, on the basis of which they adopt their own governing rules of internal or other character. These norms clearly give rise to international obligations. Apart from these sources, there are also others of unclear character that may constitute obligations of international, internal, institutional or purely moral character. In this regard, there are above all internal rules of International Organizations concerning their accountability commitments, whose legal status cannot be fully ascertained.

1.1.2 Subjects of International Development Law

IDL encompasses a variety of subjects that are charged with different, pre-defined roles, and varying degree of personality and powers. This is in accordance with the reasoning of the ICJ expressed in the Advisory Opinion in the *Injuries* case, which stated the following:

> "*The subjects of law in any legal system are not necessarily identical in their nature or in the extent of their rights, and their nature depends upon the needs of the community. Throughout its history, the development of international law has been influenced by the requirements of international life, and the progressive increase in the collective activities of States has already given rise to instances of action upon the international plane by certain entities which are not States.*"[3]

Nonetheless being a subject of IDL does not necessarily mean the attainment of a general legal personality under international law. Therefore subjects of the IDL may be distinguished firstly into those that possess international legal personality, *i.e.* States and International Organizations, and those who are purely private persons. The latter encompasses a variety of entities, including NGOs, individuals, and corporations. Second possible division may be drawn from the role each of the aforementioned has in the International Development System. Here we may determine the following subjects: 1) State actors as providers of funding and assistance, 2) International

---

[2] Official Documents. *Statute of the International Court of Justice*, Article 38.
[3] *Reparation for Injuries Suffered in the Service of the United Nations,* Advisory Opinion, 11 April 1949, p. 178.

Organizations that facilitate the development assistance and streamline efforts of States, and 3) private persons as the ultimate beneficiaries. Furthermore there is a plethora of executive, advisory, and inspection bodies, tasked with various mandates, and charged with varying degree of executive powers and/or influence. These are merely organizational units that do not possess separate legal personality whatsoever.

As of particular International Organizations of IDL, under this framework, it may be distinguished between International Financial Institutions and other International Organizations, such as the United Nations and its Specialized Agencies and Funds in the field of development. The International Financial Institutions may be further subdivided into multilateral banks, International Monetary Fund and International Finance Corporation.[4] In particular among the multilateral development banks, there are the agencies of the World Bank Group,[5] as well as regional and local development banks, such as the European Bank for Reconstruction and Development (the "EBRD"), Asian Development Bank (the "AsDB"), African Development Bank (the "AfDB"), Inter-American Development Bank (the "IDB") and numerous other institutions of local character. When it comes to the development agencies of the United Nations, there is a prevailing influence of the members of the United Nations Development Group (the "UNDG"), and especially the United Nations Development Programme (the "UNDP") The aforementioned agencies have differentiated mandates, and serve its purposes; hence if we were to interpret the doctrine of functional necessity that applies to the immunities of International Organizations (see below) in a strict manner, each of them enjoys more or less different set of immunities.

1.1.3 Object of International Development Law

Simply put, the object of the relations under the IDL is development. This is a vague legal term that is not too easily defined. Here, the notion of the Official Development Assistance (the

---

[4] Sarkar, Rumu. *IDL: Rule of Law, Human Rights & Global Finance*. op. cit., p. 80.
[5] World Bank Group (the "WBG") comprises of five International Organizations: the International Bank for Reconstruction and Development (the "IBRD"), the International Development Association (the "IDA"), the International Finance Corporation (the "IFC"), the Multilateral Investment Guarantee Agency (the "MIGA") and the International Centre for Settlement of Investment Disputes. See more at World Bank. *About the World Bank* [online], retrieved 10 February 2017, available at: http://www.worldbank.org/en/about.

"ODA") may help in determining its content. The ODA is usually defined as "*government aid designed to promote the economic development and welfare of developing countries.*"[6] It was adopted by the OECD Development Assistance Committee (the "DAC") in 1969, and has significantly evolved over time. The significance of definition of the ODA for the IDL lays in the distinction of development assistance from the other such financial flows that are to a certain extent contributing to the development, but their provision falls outside the scope of IDL.

More precisely, the DAC defines ODA as follows "*those flows to countries and territories on the DAC List of ODA Recipients and to multilateral institutions which are: (i) provided by official agencies, including state and local governments, or by their executive agencies; and (ii) each transaction of which: a) is administered with the promotion of the economic development and welfare of developing countries as its main objective; and b) is concessional in character and conveys a grant element of at least 25 per cent (calculated at a rate of discount of 10 per cent).*"[7] The notion of *promotion of economic development and welfare as main objective* does, by definition, preclude certain branches from being regarded as ODA; typically it is military aid (including counterterrorism activities), military aspects of peacekeeping, grants aimed at the branch of nuclear energy for non-civilian purposes, and self-promotion activities of the donor countries.[8] On the other hand there are also certain exceptions to the strict non-military character of ODA, as, for example, support for armies in fragile states with the objective of protection of human rights and prevention of sexual abuse.[9]

It must be noted the definition of ODA is, in itself, a quintessential political issue and a very dynamic notion.[10] It needs to mirror the current state of affairs in the International Development System, serve its objectives, as well as prevent states from curtailing it. Lastly in

---

[6] OECD Data. *Net ODA* [online]. Available at: https://data.oecd.org/oda/net-oda.htm.
[7] Organization for Economic Co-Operation and Development. *Official development assistance - definition and coverage* [online]. Available at: <http://www.oecd.org/dac/stats/officialdevelopmentassistancedefinitionandcoverage.htm>.
[8] Ibid.
[9] Department for International Development and The Rt Hon Justine Greening MP. Changes to official aid rules. In: News Stories, GOV.UK. 19. 2. 2016 [retrieved 15. 3. 2016]. Available at: <https://www.gov.uk/government/news/changes-to-official-aid-rules>.
[10] Robinson, J. Redefining ODA: An opportunity for more comprehensive development. In: International Alert. 10. 2. 2014 [retrieved 12. 3. 2016]. Available at: <http://www.international-alert.org/blog/redefining-oda#sthash.XjDwAAU5.dpbs>.

light of the newly adopted global commitments of 2016, [11] the definition of ODA is very likely to be reopened and updated by the DAC.[12]

1.2 Terminological distinction: accountability, responsibility, liability and control

There might be distinguished between three terms: *accountability, responsibility* and *liability.*[13] The prevailing view is that whereas the notion of "*responsibility*" has been ascribed a well-known and settled meaning and content under Public International Law, such attributes of "*accountability*" are far from clear. This issue shall be further thoroughly examined in the next chapter.

Certain sources add a third line into these considerations and that is the liability.[14] This is to be understood as "*duty of reparation or of compensation in the absence of a breach of obligation*." [15] The ICJ pronounced on the capacity of International Organizations to bear responsibility in the 1999 *Cumaraswamy* case, when it drew the line in between the immunity of a Special Rapporteur and the necessity of compensation of damages incurred due to acts performed by the United Nations and/or its agents in official capacity, here defamatory comments.[16] Liability of International Organization is, however, usually contractually excluded in the loan contracts under IDL;[17] hence it is of no relevance whatsoever in this framework and falls outside the scope of this paper.

---

[11] The global commitments of 2016 are the Agenda for Sustainable Development, the Paris Agreement, and the Sendai Framework for Disaster Risk Reduction.

[12] DAC High Level Meeting. Communiqué, 19. 2. 2016, Annex I: Principles of ODA Modernisation on Private Sector Instruments. Available at: <http://www.oecd.org/dac/DAC-HLM-Communique-2016.pdf>.

[13] Faix, Martin. *Law of international organisations.* Olomouc: Palacký University Olomouc, 2012. Textbooks. ISBN 978-80-244-3213-7, p. 153.

[14] See for example Šturma, Pavel. Mezinárodní odpovědnost za škodlivé následky činností nezakázaných mezinárodním právem. In Čepelka, Čestmír, Dalibor Jílek a Pavel Šturma. *Mezinárodní odpovědnost*. Brno: Masarykova univerzita, 2003. Acta Universitatis Brunensis. Iuridica. ISBN 80-210-3057-7. s. 67.

[15] Sorel, Jean-Marc. The Concept of Soft Responsibility? In: In: Crawford, James, Alain Pellet, Simon Olleson a Kate Parlett. *The law of international responsibility*. Oxford: Oxford University Press, 2010. Oxford commentaries on international law. ISBN 978-0-19929697-2. p. 140.

[16] *Differences Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights,* Advisory Opinion, 29 April 1999, p. 30.

[17] Bradlow, Daniel D. International Organizations and Private Complaints: The Case of the World Bank Inspection Panel. In: Virginia Journal of International Law, Vol. 34, Issue 3 (Spring 1994), pp. 553 – 614, p. 560.

The term "*control*" exists in parallel to the aforementioned, but it in itself represents rather an intersection of various other institutes of international law, which then transpires throughout the accountability architecture and represents one of its functions. In the field of accountability of International Organizations to their member states, it may be held, that the accountability fundamentally represents a form of exercise of control. With respect to the individuals and/or the international community (see hereunder), such controlling relationship is not founded. Control is, therefore, a substantially differentiated concept.

2. Accountability and Responsibility of the International Organizations of IDL

In order to be fully capable of exercising their powers and functions, and fulfilling their purposes, International Organizations enjoy immunity pertaining to their legal personality. On the other hand, the range of immunities claimed by the International Organizations usually tends to be interpreted or directly claimed by the respective International Organizations as absolute.[18] For this reason, the legal means of holding the International Organization accountable are generally scarce, and with respect to individuals almost non-existent.[19] Consequently, the doctrine warns about the outsourcing of certain activities by the States to International Organizations in order to avoid triggering state responsibility.[20] Hence if the International Organization takes over the tasks of a state, it may be claimed that it should be subjected to the checks and balances that limit state powers in this regard as well.[21] In particular, in the field of IDL, the extensive range of activities of International Organizations has led to the establishment of an accountability architecture that is designated to enhance legitimacy and promote rule of law.

The purpose of this chapter is to give an overview of the relevant international law norms and basic concepts that pertain to the accountability and responsibility of International Organizations of IDL. This should serve the practical application under IDL in chapters below. For this reason, the paper first describes the very basics of the position of International Organizations under international law, especially the issues of legal personality, immunities and privileges and responsibility. Then the focus turns on accountability, its definition and content and relation to the notion of responsibility. Special focus is put on the application of the *lex specialis* provision.

---

[18] Singer, Michael. Jurisdictional Immunity of International Organizations: Human Rights and Functional Necessity Concerns. In: Virginia Journal of International Law, Vol. 34, Issue 1 (Fall 1995), pp. 53 – 166, p. 73.
[19] Hey, Ellen. The World Bank Inspection Panel: Towards the Recognition of a New Legally Relevant Relationship in International Law. op. cit. In: *Hofstra Law and Policy Symposium*, p. 61.
[20] Hey, Ellen. The World Bank Inspection Panel: Towards the Recognition of a New Legally Relevant Relationship in International Law, op. cit., p. 65; Singer, Michael. Jurisdictional Immunity of International Organizations: Human Rights and Functional Necessity Concerns. op. cit., p. 58.
[21] Hey, Ellen. The World Bank Inspection Panel: Towards the Recognition of a New Legally Relevant Relationship in International Law, op. cit., p. 64.

2.1 The basic legal setting of International Organizations

2.1.1 Legal personality

International (i.e. intergovernmental) organization is established on the basis of an international agreement that determines its fundamentals as well as its subjective rights and obligations. This is usually called the constituent instrument. This agreement also vests a power to enter into international agreements in the International Organization.[22] An International Organization may be also entitled to participate on international lawmaking, provided that it has a headquarters agreement and is given certain privileges and immunities in order to be fully capable to fulfill its purpose.[23] International Organizations thus have the so-called "*international legal personality*", as it was confirmed, *i.a.* by the ICJ in its 1949 Advisory Opinion in the case *Reparation for Injuries suffered in the Service of the United Nations*.[24] In this regard, *Crawford* summarizes the precondition for the attainment of legal personality by an International Organization as follows:

> "*a) a permanent association of states, or other organizations, with lawful objects, equipped with organs;*
>
> *b) distinction, in terms of legal powers and purposes, between the organization and its member states; and*
>
> *c) the existence of legal powers exercisable on the international plane and not solely within the national systems of one or more states.*"[25]

Furthermore, one of the criteria within the legal personality is also the capacity to bear responsibility for an internationally wrongful act.[26] This determination, however, does not limit

---

[22] Čepelka, Čestmír a Pavel Šturma. *Mezinárodní právo veřejné*. Praha: Beck, 2008. Právnické učebnice. ISBN 978-80-7179-728-9, p. 80.
[23] Čepelka, Čestmír a Pavel Šturma. *Mezinárodní právo veřejné*. op. cit., p. 82.
[24] *Reparation for Injuries Suffered in the Service of the United Nations,* Advisory Opinion, 11 April 1949, p. 182.
[25] Crawford, James a Ian Brownlie. *Brownlie's principles of public international law*. Eighth edition. Oxford: Oxford University Press, 2012. ISBN 978-0-19-965417-8., p. 169.

the possibility of address other violations of obligations of International Organizations that are considered to be acts not prohibited by international law.

The International Organizations are generally capable of adopting their own rules and resolutions, whereby they deliberately undertake to commit themselves to a certain conduct. If an International Organization acts in breach of such obligations or acts in a department where it shall behave in a certain way, it shall be subjected to accountability with respect to this conduct. This obligation is much broader, and encompasses the whole of the participation of an International Organization in international affairs.

2.1.2 Immunities and privileges of International Organizations

Usually at the core of discourse about the legal regime that encompasses an International Organization, the core of the debate is twofold: immunities and privileges. There is not a clear dividing line between these two notions, nonetheless it may be derived that "[i]*mmunity is usually used to describe immunity from suit in the courts of a foreign state, i.e. it prevents domestic authorities in assessing the existing legal situation. In contrast, privileges make exemptions or modifications from domestic substantive or procedural law.*"[27] Since the focus of this paper is put especially onto procedural issues, the issue of privileges is to be set aside.

The predominant way of granting immunity to an International Organization are 1) express provision thereon in its constitutive instrument, 2) separate and specific bilateral or multilateral agreements, and/or 3) a headquarters agreement with the hosting state.[28] International Organizations in general benefit from the so-called "*functional immunity*". This is also expressed as such immunities are subject to the "*doctrine of functional necessity*".[29] That is to say that International Organization should be exempt from the jurisdiction of any court insofar as it is

---

[26] Ibid, p. 183.
[27] Faix, Martin. *Law of international organisations.* Olomouc: Palacký University Olomouc, 2012. Textbooks. ISBN 978-80-244-3213-7, p. 118.
[28] Ibid, p. 119.
[29] Wellens, Karel. Accountability of International Organizations: Some Salient Features. In: American Society of International Law Proceedings, Vol. 97 (2003), pp. 241 -245, p. 241.

utterly necessary for it to fulfill its mandate and purpose.[30] Regretfully, this notion has been interpreted extensively,[31] whereas this led to an expansion thereof until a state where International Organizations are basically untouchable by the brakes of law, be it domestic or international.

As the immunities of International Organizations are analogical to those awarded to States, applicability of the distinction between *acta jure imperii* and *acta jure gestionis* may come into question. Under this theory, the former are acts of a State, whereas it is a long recognized principle that a State policy shall not be assessed by a court of another, hence such acts shall be covered by immunity.[32,] The latter occurs when State engages outside its sovereign realm, whereas in such cases no immunity applies.[33] At first, it would seem logical that under the notion of *functional immunity*, such distinction would be acknowledged and maintained. This, however, does not seem to be the case, as the *acta jure gestionis* undertakings of International Organizations (such as employment issues or commercial contracts, tax liability etc) are still usually covered by immunity in case of International Organizations,[34] as it was first stated under the *Mendaro v. World Bank* case[35] and numerously reaffirmed hereafter. With the lack of such limitation, a slightly unfavorable situation occurs, whereas the International Organization's *functional immunity* is stretched basically up to absolute character.[36] The reasoning behind such absolute immunity is twofold: firstly, it is maintained that it would be an insufferable administrative burden for the International Organizations to abide by all domestic laws with

---

[30] Singer, Michael. Jurisdictional Immunity of International Organizations: Human Rights and Functional Necessity Concerns, op. cit., p. 56.
[31] An example of such extensive application of the immunities may be when the United Nations have been using its immunity in order to avoid liability for damage of property over the course of performing its peacekeeping mandates.
[32] Singer, Michael. Jurisdictional Immunity of International Organizations: Human Rights and Functional Necessity Concerns, op. cit., p. 63.
[33] Ibid.
[34] Parish, Matthew. An Essay on the Accountability of International Organizations. In: *International Organizations Law Review*, Vol. 7, Issue 2 (2010), pp. 277 – 342., p. 305.
[35] *Susana MENDARO, Appellant, v. The WORLD BANK, a/k/a International Bank for Reconstruction and Development*. United States Court of Appeals, District of Columbia Circuit. Decided September 27, 1983. 717 F.2d 610 (1983).
[36] Parish, Matthew. An Essay on the Accountability of International Organizations, op. cit., p. 306.

respect to all of its employees. Second is that immunity serves as a safeguard against State interference and thus protects the International Organization's independence.[37]

Parish addresses this issue of legal gap similarly on a graphic example of "International Torture Organization" set up in order to facilitate torture, allowing the States to circumvent their national legislation.[38] Thus he illustrates the paradoxical nature of International Organizations being used for purposes prohibited by national laws and policy, such as US funding of development assistance to countries, against which the US imposed sanctions.[39]

To conclude, as the acts of International Organizations are covered by immunity, and there is no judicial body whatsoever, where complaints against such acts could be launched, a situation of lawlessness arises. It is close to impossible for an individual, or a State for that matter, to drag International Organization before a court, irrespective of the level of unlawfulness of its act. Therefore, the accountability system could present a feasible alternative for ensuring the lawfulness of the acts of International Organization.

2.2 Accountability of International Organizations

In its purest form, accountability is both political and legal criterion, which should serve as a reactionary counterweight to power.[40] Its purpose is generally to provide sufficient safeguards, be it legal or even political, against arbitrarily adverse actions of any actor. It does not necessarily have to offer redress to the adversely affected party or invoke international responsibility. Its purpose is much wider, whereas it does not solely aim at remedying the wrongful state of affairs, but encompasses further matters of reputational damage, systematic faults in design of power, as well as the issue of appropriate long-term solutions.

---

[37] Ibid, 315.
[38] Ibid, p. 279.
[39] Ibid, p. 281.
[40] Nguyen Quoc Dinh, Patrick Daillier a Alain Pellet. *Droit international public: formation du droit, sujets, relations diplomatiques et consulaires, responsabilité, reglement des différends, maintien de la paix, espaces internationaux, relations économiques, environnement*. 7e éd. Paris: Librairie générale de droit et de jurisprudence, 2002. ISBN 2-275- 02174-4, p. 182.

The demands for accountability have been on the table especially given the wide-ranging immunities of International Organizations as described above. Also accountability is a prerequisite for the reign of rule of law in any legal system, notwithstanding in international law. The doctrine started to address this issue in particular because of the increasing importance of undertakings of International Organizations, as well as the broad range of powers and tasks of the International Organizations. As the International Organizations are often at least to a certain extent exercising sovereign powers that have been conferred on them by the States, the lack of any accountability whatsoever seems to be legal gap. As *Sarooshi* puts it in this context:

> "*In most States this value has come to be regarded as being inextricably interlinked with the exercise of sovereign powers at the domestic level through a long and arduous process of contestation, and the value is often reflected in constitutional and other public law constraints on the exercise of such powers. The conferrals by States of their powers on International Organizations free from the normative limitations that constrain the exercise of these powers at the national level is to dispense with, by the stroke of a pen, the limitations on governmental tyranny that peoples have fought hard to win within their domestic polity.*"[41]

In this sense, accountability goes hand in hand with the public nature of the International Organizations' operation. Such publicity means that "*[…] legitimacy relays on decision making processes that, at the very least, conform to basic public expectations and norms about transparency, participation and responsive governance.*"[42]

Accountability is yet to gain prominence under international law. Due to this state, the content of accountability remains somehow vague. Certain efforts in the field aiming at codification or progressive development of the rules pertaining to accountability has been undertaken by the Committee on Accountability of International Organizations of the International Law Association (the "CAIO"). It has produced reports of its conferences that

---

[41] Sarooshi, Dan. *International Organizations and their exercise of sovereign powers*. Oxford: Oxford University Press, 2007. Oxford monographs in international law. ISBN 978-0-19-922577-4. p. 14.
[42] Ebrahim, Alnoor and Steve Herz. Accountability in Complex Organizations: World Bank Responses to Civil Society. In: *Harvard Business School Working Knowledge.* p. 4.

contain a set of recommended rules and practices. Their reports, however, are not a source of international law, they are not binding upon the International Organizations and do possess solely disputable authority.

2.2.1 Legal definition and content of the term

The legal definition of accountability is virtually non-existent, and there is lack of clarity ever when it comes to its content. In this sense, the CAIO ascertains that the accountability entails "*[…] the duty to account for the exercise of power.*"[43] In the same regard *Šturma* describes the notion as "*[…] having the meaning rather in the sense of social responsibility, control and duty to account for the activities*."[44] In its amebic character, a mixture of political and legal safeguards as well as the economic incentives may play a significant role. Accountability is a target-oriented notion, aiming at providing the person accountable for the wrong, which is to a certain extent a remedy on its own, and only subsequently pursuing the lessons-learned as well as material remedies.

Fundamentally, it may be distinguished in between *political accountability* and *legal accountability*.[45] The former constitutes a broader term, as it is not necessarily limited to legal redress. Apart from the accountability enshrined within legal mechanisms it also encompasses reputational accountability, voting powers and funding pressure from member states, public scrutiny and other, hardly measurable criteria. The legal accountability, on the other hand, stretches only to the legal means of holding an International Organization accountable. This is primarily a quantifiable notion, as it may be measured by the available means, or number of complaints. The quality of legal accountability lays in especially actual effectiveness of the redress. Some authors also denominate this concept as the so-called "*soft responsibility*" to

[43] International Law Association, Committee on Accountability of International Organizations. *Report of the London Conference*, 2000, p. 4.
[44] Šturma, Pavel. Vztah odpovědnosti států a odpovědnosti mezinárodních organizací. In Gerloch, Aleš a Pavel Šturma. *Odpovědnost v demokratickém právním státě*. Praha: Univerzita Karlova v Praze, Právnická fakulta, 2013. Právo a společnost. ISBN 978-80-87146-81-1. p. 67.
[45] Parish, Matthew. An Essay on the Accountability of International Organizations, op. cit., p. 227.

international frameworks.[46] A sub-category of the legal accountability is represented by norms concerning *responsibility* and *liability*.[47]

Feasible is also basic distinction in between passive and active element of accountability. The active side could be understood as: "*[...] an obligation to ensure that the International Organization acts within the law and does not cause damage to third parties, without any noncompliance leading to attribution of the wrongful act to member states*."[48] Passive side, on the other hand, lays in that "*[a]lthough remedial action is directed against the IO, not directly against member states, the states remain internally responsible for putting the International Organization in funds to meet the financial consequences of its noncompliance*."[49]

Speaking from a practical point of view, the review of the accountability mechanisms under IDL is limited to the internal operational policies of the respective International Organizations. Hence the subject of the accountability relationship is the implementation of the internal regulations and compliance therewith. The reasoning behind such step is mostly based on efforts to make a clear distinction between the accountability of the International Organization and the hosting State or other actors that engage into the development process.[50] The need for such distinction is the overarching caution of the International Organizations concerning the sovereignty of the hosting State, which must not be, under any circumstances, violated by the International Organization.

2.2.2 Legal basis of accountability

Accountability concerns transpire within both primary norms of public international law that is in terms of the primary legal obligations, as well as within secondary norms.[51] Concerning

---

[46] Sorel, Jean-Marc. The Concept of Soft Responsibility? In: In: Crawford, James, Alain Pellet, Simon Olleson a Kate Parlett. *The law of international responsibility*, op. cit., p. 174.
[47] Faix, Martin. *Law of international organisations.* Olomouc: Palacký University Olomouc, 2012. Textbooks. ISBN 978-80-244-3213-7, p. 154.
[48] Wellens, Karel. Accountability of International Organizations: Some Salient Features. In: American Society of International Law Proceedings, Vol. 97 (2003), pp. 241 -245, p. 241.
[49] Ibid.
[50] Bradlow, Daniel D. International Organizations and Private Complaints: The Case of the World Bank Inspection Panel. op. cit., p. 566.
[51] International Law Association, Committee on Accountability of International Organizations. *Report of the London Conference*, 2000. p. 2.

primary norms, it would be conceivable that accountability and efforts to achieve it form at least in part the obligations pertaining to good governance, including norms on participation in decision-making process and access to information,[52] and sound global administration in general. In the field of obligations under secondary norms, accountability overlaps to a certain extent with responsibility and liability. It must be emphasized that responsibility does not in itself cover the whole secondary-norm content of accountability, as the invocation of responsibility is not a prerequisite of application of some of the mechanisms of accountability of the International Organizations. To sum these observations up, the CAIO distinguishes between the following levels of accountability:

> "*First level: the extent to which International Organizations, in the fulfillment of their functions as established in their constituent instruments, are and should be subject to, or should exercise forms of internal and external scrutiny and monitoring, irrespective of potential and subsequent liability and/or responsibility;*
>
> *Second level: tortuous liability for injurious consequences arising out of acts or omissions not involving a breach of any rule of international and/or institutional law (e.g. environmental damage as a result of lawful nuclear or space activities);*
>
> *Third level: responsibility arising out of acts or omissions which do constitute a breach of a rule of international and/or institutional law[.]*"[53]

There is an issue, if the accountability norms actually represent solely a representation of an international obligation of the respective organization or if they are limited to mere internal commitment with no legal relevance outside the International Organization. This discussion begins with the scope of international obligations undertaken by the International Organizations. In this regard, there has been a long debate on whether the International Organizations are bound

---

[52] Hafner, Gerhard. Accountability of International Organizations. In: American Society of International Law Proceedings, Vol. 97 (2003), pp. 236 – 240, p. 239.
[53] International Law Association, Committee on Accountability of International Organizations. *Final Report of the Berlin Conference*, 2004, p. 5.

by the human rights law, despite not being parties to the respective agreements.[54] Also, it is to a certain extent accepted that they are bound by custom,[55] by general rules of international law and by its constituent instruments.[56] In addition to the lawmaking through international treaties, the International Organizations of IDL adopt resolutions and internal policies on the top of their constituent instruments. This legal foundation of the accountability architecture may seem controversial, as it fundamentally goes beyond the treaty law that has traditionally stipulated the fundamentals of operations of International Organizations.[57] In this regard, when speaking about what is an international obligation of International Organization the Article 10 (1) of the Draft Articles permits existence of international obligation regardless of the origin or character of the obligation concerned. Furthermore, the Article 10 (2) expressly stipulates, that such international obligation may arise if the obligation is towards the member states under the rules of the organization. The *Commentaries*, however emphasize that the debate over the legally binding obligations arising out of internal regulations of International Organizations is far from unanimous.[58] Also *Crawford* stresses that the "*Resolutions of organs of the United Nations on questions of procedure create internal law for members.*" [59] Therefore it may be concluded that while some of the obligations are indeed forming international obligations in spirit of the rules governing responsibility, some are not. This does not, however, preclude the internal regulations from having overlapped into the field of international obligations. The internal regulations that are safeguarded by the accountability mechanisms under the current accountability architecture are thus a mixture between three kinds of commitments: 1) international obligations, 2) quasi-international obligations, whose character might be disputable, 3) obligations undertaken solely of moral character.

---

[54] For discussion on this matter, see for example Reinisch, August. Securing the Accountability of International Organizations. In: *Global Governance*, Vol. 7, Issue 2 (April – June 2001), pp. 131 – 150, International Law Association, Committee on Accountability of International Organizations. *Final Report of the Berlin Conference*, 2004, p. 22; Hunter, David. Amazon Burning and the World Bank: Lessons from the Second World Bank Inspection Panel Claim. In: *Environmental Law & Policy: Eco-Notes*, 1 Eco-Notes 1 1995, p. 64.

[55] Reinisch, August. Securing the Accountability of International Organizations. op.cit., p. 136.

[56] Official document: UN Doc. A/66/10. *International Law Commission. Draft articles on the responsiblity of International Organizations.* Published also in Yearbook of the International Law Comission, 2011, vol. II, Part Two, p. 31, *Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt,* Advisory Opinion of 20 December 1980, p. 89.

[57] Hafner, Gerhard. Accountability of International Organizations. In: American Society of International Proceedings, Vol. 97 (2003), pp. 236 – 240, p. 240.

[58] Official document: UN Doc. A/66/10, op.cit., p. 32.

[59] Crawford, James a Ian Brownlie. *Brownlie's principles of public international law.* op. cit., p. 196.

To sum up this discussion, it is not absolutely clear whether the respective obligations stem from international law or are purely moral and internal commitments of the International Organizations. To the extent that these commitments create obligations under international law, the structure is covered by responsibility as well as accountability. The remainder forms solely accountability-bound norms.

2.2.3 The relation between accountability and responsibility

In the previous subsection, the question of relation between accountability and responsibility has been briefly touched in relation with the legal basis thereof. Generally, there is no unanimous stance on the relation between accountability and responsibility. Some authors claim that responsibility is one of the reflections of accountability,[60] whereas others suggest juxtaposition between these two.[61] In this regard, *Hafner* pronounced that "*[…] accountability seems to reflect primarily the need to attribute certain activities under international law to such actors as a precondition for imposing on them responsibility under international law.*" [62] Inasmuch as this could be a viable opinion, the influence of accountability goes much wider. In this regard, it could be stated that accountability widens the scope of safeguarded obligations, to stretch it apart from just flagrant violations of international obligations, to general commitment to good governance.

Secondly, probably the biggest difference in between accountability and responsibility could lie in the fact, that unlike responsibility, accountability seems to contain also primary norms of international law. The ILC has rejected the inclusion of primary norms into responsibility concerns as follows: "*The [Draft Articles] thus rely on the basic distinction between primary rules of international law, which establish obligations for International Organizations, and secondary rules, which consider the existence of a breach of an international obligation and its consequences for the responsible International Organization.*" [63]

---

[60] Faix, Martin. *Law of international organisations.* op. cit., p. 154.
[61] Hafner, Gerhard. Accountability of International Organizations. In: American Society of International Proceedings, Vol. 97 (2003), pp. 236 – 240, p. 236.
[62] Ibid, p. 237.
[63] Official document: UN Doc. A/66/10. op. cit., p. 2.

Accountability to the contrary reflects the obligations under primary rules, as it is overarching notion in terms of the whole operation of the respective IO. [64]

Based on the source of the obligation, as described in previous section, we may distinguish between the accountability that covers the maintenance of international obligations of the International Organizations, *i.e.* responsibility, and accountability that does not. On the other hand, there are also international obligations that are not reflected within the internal regulations; therefore they are solely part of the broader accountability, which is not enforced by the international accountability mechanisms. An example of this may be human rights obligations – if the International Organization transposes its international obligation pertaining to certain treatment of indigenous people into its internal policy, the claim before accountability mechanism could trigger invocation of international responsibility as well. On the other hand, if the International Organization provides in its internal rules that it shall perform Environmental Impact Assessment that rises to certain standards, and this is not considered as a mere transposition of international obligation, responsibility remains untouched. Hence, it may be observed that accountability and responsibility overlap to a certain extent.

Furthermore, with respect to responsibility, there is no incumbent necessity of damage for the existence of responsibility.[65] Here the stance differs especially in relation to the international accountability mechanisms differ, whereas in order to request inspection under these frameworks there must be a *material adverse effect*, or at least potentially arising out of the breach committed by the International Organization at hand to the detriment of the claimant.

To summarize, the responsibility serves in contrast to accountability as a seemingly "graver" or "stricter" criterion. The criteria for the invocation of international responsibility are much tighter and require that the international obligation is firmly anchored within international law. Accountability, on the other hand, is much wider and fulfills different purpose than responsibility: responsibility subjects the International Organization to the reparation obligation under purely public international law, which may be shaky and politicized. Accountability, on the

---

[64] See Hafner, Gerhard. Accountability of International Organizations. op. cit., p. 239; Wellens, Karel. Accountability of International Organizations: Some Salient Features. op. cit., p. 241.
[65] Official document: UN Doc. A/66/10. op. cit., p. 14

other hand, is fluid in its reflection, and through scrutiny, be it by public or by member states, it may impose much graver consequences.

2.2.4 Subjects within accountability architecture

In terms of defining the accountability architecture, a note must be given onto the nature of participants in the system. In this regard, it may be distinguished between two parties of the accountability relationship, whose content is the accountability of one party to another. For the purpose of this paper, the party which is being (or is supposed to be) accountable is an International Organization. The other end of the equation is, however, not straightforward. There may be two main actors: member States of the respective International Organization, and individual or group of individuals. Under certain circumstances, it would be conceivable that there would be accountability towards the entire international community (encompassing both States and other International Organizations); this would, however, depend largely upon circumstances, and such determination falls outside the scope of this paper.

2.2.4.1 Accountability of International Organizations towards its member States

The accountability of majority of International Organizations is secured primarily through influence and voting power of the member states. For example in the case of World Bank the amount of votes corresponds to the share on the capital. Hence the amount of influence over decision-making, and thus accountability, shall be proportional to the financial investment of the state.[66] Such accountability, however, falls rather into the political realm, instead of legal one.[67]

Within the concerns about responsibility of International Organizations, there is an issue of shared responsibility between State and International Organization.[68] Nevertheless, given the amebic nature of the accountability, it is impossible to draw a sharp line between accountability of a state and of International Organization.

---

[66] Ebrahim, Alnoor and Steve Herz. Accountability in Complex Organizations: World Bank Responses to Civil Society. op. cit., p. 13.
[67] Reinisch, August. Securing the Accountability of International Organizations. op. cit., p. 133.
[68] Šturma, Pavel. Vztah odpovědnosti států a odpovědnosti mezinárodních organizací. In Gerloch, Aleš a Pavel Šturma. *Odpovědnost v demokratickém právním státě.* op. cit.

Perhaps the biggest tool of the member States for pressing accountability is the funding. Simply put, if an International Organization acts contrary to its obligations, a State may accordingly diminish its funding to such International Organization to express its disapproval of its actions. On the other hand, especially in terms of World Bank and other International Organizations, the voting power and decisive influence is tied to the amount of funding provided. Hence it might be counterproductive for the State to undertake to cut such funding, as it would be *ipso facto* a withdrawal of an accountability mechanism itself.

2.2.4.2 Accountability of International Organizations towards private parties

As it was stressed above, due to the immunities of the International Organizations, the means that are available to an individual to bring their claims against International Organization are rare to almost non-existent. The legal standing of an individual under international law is rather controversial, whereas it is acknowledged that an individual does not possess general legal personality under general international law. An individual may, however, exercise the so-called "*procedural capacity*" in terms of bringing an international claim.[69] In the present context, the issue entails not only the question whether the International Organization can be truly held accountable by any actor other than the State. This might also mean that International Organizations do not possess the capacity to exercise any policies with respect to individuals independently of the will of the States.[70]

There are also numerous practical obstacles to such exercise of accountability. As *Gailmard* puts it, the principal-agent model is "*inappropriate for analyzing accountability of some actor to another, when the second is unaware of its dependence on the first and/or can do literally nothing to affect the behavior of the first*."[71] For example under IDL, it is rather unlikely that traditional communities who have been materially adversely affected by the development undertakings of an International Organization would possess the necessary expertise and means

---

[69] Čepelka, Čestmír a Pavel Šturma. *Mezinárodní právo veřejné*. op. cit, p. 89.
[70] Hey, Ellen. The World Bank Inspection Panel: Towards the Recognition of a New Legally Relevant Relationship in International Law. op. cit., p. 63.
[71] Gailmard, Sean. Accountability and Principal-Agent Models. In Bovens, Mark, Goodin, Robert E. and Thomas Schillemans. *The Oxford Handbook of Public Accountability*. Oxford: Oxford University Press 2014. ISBN 9780199641253, p. 4.

to hold the International Organization accountable.[72] Furthermore, such accountability could be deemed almost undesirable. In connection to the establishment of the accountability mechanisms, there were numerous concerns about the overhaul of claims to be filed in case the individual would be permitted to bring claims against the International Organization.[73]

On the other hand, the possibility of individuals to defend its interests *vis a vis* International Organizations presents a different view. Some opinions suggest that the establishment of accountability mechanisms under IDL that allow adversely affected private parties to directly approach the International Organization gave rise to a *legally relevant* relationship between the International Organization and the adversely affected individual. [74] In this sense, there are claims that the responsive interaction between an International Organization and the people, whose development it shall serve, is essential for the successful operation thereof.[75]

Many issues arise in connection with such relationship. Concerning its nature, it may be either materially bound, i.e. concerning the matter itself, or reduced to the mere *locus standi*. Here it may be noted that the content of such relationship is, however, limited to the implementation of the decision of the International Organization, not the substantial basis thereof. Also, the procedure of international accountability mechanism is not by definition adversary. Henceforth the individual does not represent a plaintiff, but rather an incentive for the commencement of the procedure. Lastly, such accountability is limited to the adversely affected individuals that are the people present in the program (hosting) countries. It does not stretch universally, e.g. to citizens in creditor countries.[76] Therefore it would be an overstatement to say

---

[72] To a certain extent, the fact that the accountability mechanisms provide for the usage of representatives, especially from the non-governmental organizations helps to overcome this obstacle. Nonetheless, in spite of this, the situation is still far from satisfactory.

[73] Bradlow, Daniel D. International Organizations and Private Complaints: The Case of the World Bank Inspection Panel. op. cit., p. 583.

[74] Hey, Ellen. The World Bank Inspection Panel: Towards the Recognition of a New Legally Relevant Relationship in International Law. op. cit., p. 62, BRADLOW, Daniel D. International Organizations and Private Complaints: The Case of the World Bank Inspection Panel, op. cit., p. 604.

[75] Ebrahim, Alnoor and Steve Herz. Accountability in Complex Organizations: World Bank Responses to Civil Society. p. 4.

[76] Bradlow, Daniel D. International Organizations and Private Complaints: The Case of the World Bank Inspection Panel, op. cit., p. 606. *Bradlow* here suggests that the only instance under which it would be imaginable, would be

that the individuals exercise accountability towards International Organizations. Their role in the process is therefore indeed limited to functional *locus standi*, where it benefits the addressee of the accountability obligation. The fact that compensation may be awarded under the subsequent action plan, which the International Organization undertakes to perform upon the findings of the accountability mechanisms, is not legally relevant for the establishment of assumption of legally relevant relationship, whereas such compensation may be viewed as granted as a sole courtesy.

2.2.5 The role of attribution and ascription in accountability design

Another pressing issue seems to be the attribution of the acts to the International Organization with respect to accountability concerns. First and foremost, it is unclear whether the process of attribution is overall applicable to the dwellings on accountability. In this regard, it could be said that since accountability should serve as a counterweight to power, the subject that exercises such power should be held accountable. On the other hand, it would probably be detrimental to the broad interpretation of the notion, if the accountability in itself depended solely on functional nuances of which subject is on paper charged with discharging the duty. There is not a clear answer to this issue. It is safe to say that attribution does play a role within the exercise of accountability, albeit in much less formalized manner than in the case of responsibility. Rather than attribution, it is a process of ascription of a certain relevance to the conduct of an International Organization with respect to the circumstances, which are analyzed in light of accountability concerns.

Second issue, should it be agreed that such *ascription of influence* takes place in context of accountability, it must be decided what should be the determining criteria. As accountability covers a wider range of issues than responsibility, it would be reasonable to for wider criteria for *ascription of influence* than attribution as well. Therefore it would be reasonable to first apply the criteria for attribution under the rules on responsibility of International Organizations (see hereunder). On the top of this, accountability should stretch to each obligation the International Organization bound itself to comply with, even in case of internal regulations. Lastly, it would make sense that in case of joint operation of two or more subjects, of which at

---

the breach of operational policies of the World Bank that provide for disclosure, because even the creditor countries citizens are beneficiaries thereof.

least one is an International Organization, the accountability should not be divided, lest redistributed, but shared. The legal stance on this issue is nonetheless, not clear either.

2.3 Responsibility of International Organizations and its role within accountability architecture

As this Paper is concerned predominantly with accountability, and the writings on responsibility are numerous and wide-ranging, it does not aspire to cover the whole discourse. Apart from the very basics, the main two issues to be resolved in this Section are those of relevance for accountability: 1) the question of attribution of internationally wrongful acts to International Organizations and the applicability of the respective norms onto the narrow legal accountability, and 2) the *lex specialis* regimes in light of the existence of the accountability mechanisms.

2.3.1 General considerations

The general legal framework of responsibility of International Organization has been codified and progressively developed in the ILC Draft Articles on the Responsibility of International Organizations.[77] Unlike the corresponding document on the responsibility of States,[78] these Draft Articles are still in the form of a draft and have not been approved by the General Assembly. Thus their authority, especially when it comes to the progressive development, still might be subject to certain doubts. They do provide, however, valuable guidance on the matter. It seems anyway interesting for the purposes of the present Paper that the Commentary overlooks the role of the accountability mechanisms in the assertion of responsibility by the International Organizations.

The first and foremost issue arising out with respect to the responsibility of International Organization is that the body of existent entities is great in numbers as well as in an overarching diversity. In the opinion of the International Law Commission, this diversity, especially with

[77] UN Doc. A/66/10. op. cit.
[78] In this regard, for the clarity of the text, "Draft Articles" shall refer to the Draft Articles on the Responsibility of International Organizations, as opposed to the "Draft Articles on State Responsibility".

regards to the powers and functions of the respective International Organizations, could even have an adverse effect on certain of the Draft Articles.[79]

The Commentary to the Draft Articles states that the responsibility of International Organizations may be invoked under following circumstances: 1) before a national court under municipal law, 2) international responsibility due to an internationally wrongful act, 3) aid or assistance to a State or another organization in committing an internationally wrongful act, 4) direction/control, 5) coercion (the act would be wrongful amid the coercion), 6) member International Organization commits internationally wrongful act, 7) liability for acts not prohibited by international law (which is, as mentioned above, excluded as a separate question).[80]

2.3.2 Internationally wrongful act and attribution

Preconditions of imposition with respect to International Organizations are analogical the rules applicable to responsibility of States for internationally wrongful acts.[81] These are 1) the existence of a breach of international obligation and 2) attribution of the breach (the so-called internationally wrongful acts) to the International Organization.[82]

In terms of the internationally wrongful act is hence defined in more narrow sense, than in case of the accountability as described above. In this regard, one must ask whether the obligations observed by the international accountability mechanisms constitute international obligations pursuant to the Article 4 of the Draft Articles. The obligations that safeguarded by international accountability mechanisms are usually derived not directly from the constituent documents of the respective International Organizations, but rather are to be found in the form of operational policies or documents of otherwise internal binding force. In this regard, as it was said above, the ILC mentions as follows: "*The obligation may result either from a treaty binding the International Organization or from any other source of international law applicable to the*

---

[79] UN Doc. A/66/10. op. cit.
[80] Ibid, p. 5.
[81] Ibid, p. 3.
[82] Čepelka, Čestmír a Pavel Šturma. *Mezinárodní právo veřejné*. op. cit, pp. 583 – 584; Official document: UN Doc. A/66/10. op. cit., Articles 3 and 4.

organization."[83] It must be noted, that the Draft Articles give guidance on the term "*rules of an organization*" which can seem as having contained the internal safeguards being watched by the accountability mechanisms. Nonetheless, these *rules* are applicable solely to the issue of attributability as described hereunder[84] and mere reference thereto does not give them binding force as a source of international law.

Furthermore, attribution is rather difficult to establish, which may be demonstrated on the scarcity of practice.[85] The Draft Articles deal with this issue especially in its Chapter II. It is worth noting that the focus is put onto the attribution of conduct, not attribution of responsibility.[86] This means that the Draft Articles dwell upon determining, which subject has "committed" the offence, not directly which one should be denominated to bear the consequences of the unlawful conduct, which is subsequently subject to further conditions.

There are two major issues connected with the attribution of conduct to the International Organizations. Firstly, despite the general norm, attribution does not necessary have to be established under certain circumstances.[87] Secondly, the *Commentaries* to the Draft Articles expressly state the permissibility of dual or multiple attribution of conduct.[88] These are both issues connected with the specific relation in between States and International Organizations, in particular caused by the necessity of State contributions e.g. in pursuit of the purpose of the respective International Organization (especially with respect to the provision of personnel), joint efforts thereof, as well as, to a certain extent, due to concerns of the general avoidance of appropriation of responsibility by the States by means of acting through the International Organization.

The general norm on attribution within the Draft Articles is contained in the Article 6, and reads as follows:

---

[83] Ibid, p. 14.
[84] Ibid, p. 11.
[85] Ibid, p. 2.
[86] Ibid, p. 16.
[87] Ibid.
[88] Ibid.

"*The conduct of an organ or agent of an International Organization in the performance of functions of that organ or agent shall be considered an act of that organization under international law, whatever position the organ or agent holds in respect of the organization.*"

This issue has been touched upon by the International Court of Justice in the case *Reparation for injuries suffered in the service of the United Nations,* whereas it gave some very liberal guidance onto the term "agent". The ICJ linked this capacity solely with having been charged with a "*function*" by the United Nations, not necessarily to remuneration or structural involvement.[89] The ICJ also later noted that the person does not need to even have the status of a United Nation official.[90]

2.3.3 Dual and shared responsibility

The issue of a shared responsibility of a State and International Organization[91] may be approached in various ways. It is largely independent of the formal delineation of responsibilities between International Organization of IDL and a State under financial contract. The reason lays in the general relationship in between accountability and responsibility. In this sense, there is also a wide-ranging connection with the state of immunities of the International Organization. As the State may attempt to avoid the imposition of responsibility by means of acting through an International Organization, the norms on shared responsibility gain on prominence. Generally, this may be expressed as follows: "*Legally, an International Organization stands apart from its membership; the veil is not easily pierced. […] Politically, however, its members continue to constitute the organization, and as a practical matter the members have the responsibility for its operations and its effectiveness. States should not be able to escape their controlling role by treating the Fund as a scapegoat.*"[92] Therefore the situation of when a Member State undertakes

---

[89] *Reparation for Injuries Suffered in the Service of the United Nations,* Advisory Opinion, 11 April 1949, p. 177.
[90] *Applicability of article VI, section 22, of the Convention on the Privileges and Immunities of the United Nations,* Advisory Opinion of 15 December 1989, p. 194.
[91] See also Šturma, Pavel. Vztah odpovědnosti států a odpovědnosti mezinárodních organizací. In Gerloch, Aleš a Pavel Šturma. *Odpovědnost v demokratickém právním státě*. op.cit., p. 67 and following.
[92] Holder, William E. Can International Organizations Be Controlled? Accountability and Responsibility. In. *American Society of International Law Proceedings*, Vol. 97 (2003), pp. 231 – 246, p. 235.

unlawful activity through the International Organization and thus attempts to escape its obligations under State responsibility seems to be utterly undesirable under international law.

The issue has been briefly touched upon already in the Draft Articles on State Responsibility for Wrongful Acts of 2001 in Article 57, where the ILC took a direction to curb this issue entirely out of scope of the aforementioned Draft Articles. The responsibility of State who would have committed an internationally wrongful act as a member of an International Organization has been left out of the scope of the Draft Articles on State Responsibility as well.

2.3.4 Application of the *lex specialis* provision

Self-contained regimes are established through the application of special norm, the so-called *lex specialis* to general circumstances, which means that different legal regimes are applicable to comparable situations. Self-contained regimes are a regular occurrence under international law. Nonetheless this regularity does not reign in the field of responsibility, because at least in case of State responsibility "*[s]elf-contained regimes in the area of State responsibility are, thus, neither conceivable nor desirable.*"[93] With respect to the International Organizations, it is not unusual that a separate self-contained regime is founded through treaty law in the constituent instruments of the respective organizations.

The possibility of an establishment of a self-contained regime with respect to International Organization is envisaged in the Draft Articles as well. The Article 64 stipulates upon the application of *lex specialis* as follows:

> "*These draft articles do not apply where and to the extent that the conditions for the existence of an internationally wrongful act or the content or implementation of the international responsibility of an International Organization, or of a State in connection with the conduct of an International Organization, are governed by special rules of international law. Such special rules of international law may be contained in the rules of*

[93] Simma, Bruno and Dirk Pulkowski. Leges specials and self-contained regimes. In: Crawford, James, Alain Pellet, Simon Olleson a Kate Parlett. *The law of international responsibility*. Oxford: Oxford University Press, 2010. Oxford commentaries on international law. ISBN 978-0-19929697-2, p. 140.

the organization applicable to the relations between an International Organization and its members."

Furthermore, in the *Commentaries*, the ILC emphasizes the importance of this clause in the context of reflection of the thorough diversity among the International Organizations.[94]

The issue is of particular importance in the context of existence of the constituting documents of the accountability mechanisms. The Draft Articles define "rules of the organization" as "[…] *in particular, the constituent instruments, decisions, resolutions and other acts of the International Organization adopted in accordance with those instruments, and established practice of the organization*." It may be derived that such definition does not necessarily preclude the constituent documents of the international accountability mechanisms from fulfilling the criteria of being the rules of the organization, and hence represent a *lex specialis* within the meaning of Article 64 of the Draft Articles. Since this is not prohibited, the next concern is, again, the issue of whether international obligations are the matter under safeguard of the accountability mechanisms. If this was the case, then the accountability would be perceivable as mechanisms ensuring both accountability and responsibility. Nonetheless, as stated above, the regimes of accountability and responsibility exist in parallel, hence it can be said that to the extent international obligations are in question, the responsibility is invoked, but not exhausted. It is definitely perceivable that an event could occur that would give rise to the secondary obligation under the framework of responsibility, without having been able to trigger the proceedings before the accountability mechanism. Hence the dichotomy of accountability and responsibility persists even under the *lex specialis*, under circumstances as follows:

"*If non-compliance does not necessarily imply unlawfulness, which 'breach' does, it would be conceivable to apply the 'hard' State responsibility regime in parallel, because the two sets of norms do not purport to regulate the same subject-matter. Alternatively, it could be argued that both the regime of State responsibility and [non-compliance*

[94] Official document: UN Doc. A/66/10. op. cit., p. 3.

procedure] spell out consequences of a deviation from normative expectations. Then, the [non-compliance procedure] could be considered a lex specialis."[95]

Furthermore to this account, World Bank dwells on the *lex specialis* provision in its comments to the Draft Articles. The comments emphasize the role of the special rules that are, especially in the case of international financial institutions, rather extensive. In this regard, the World Bank draws attention to the provisions in its financial agreements that stipulate the consequences of a breach of primary obligations. Thus it claims that such norms constitute *lex specialis* in the spirit of the aforementioned provision.[96] It does not expressly reflect, however, its accountability mechanism, the Inspection Panel. Therefore, this constitutes another argument in favour of the duality, even in terms of applicability of the *lex specialis* provision.

2.4 Conclusion

Accountability and responsibility are two distinct notions under international law, which coexist and overlap to a certain degree. Accountability is a broader concept, touching upon both primary and secondary norms of international law, as well as mere internal commitments of International Organizations. Responsibility on the other hand represents solely secondary relations under international law, i.e. consequences of a breach of international obligation. While under accountability architecture there might be certain relations in between an individual and an International Organization, these do not give rise to a legally relevant relationship. Lastly, whereas the upmost necessary precondition of responsibility is attribution of the wrongful act, accountability requires merely ascription of the conduct that does not seem to be subjected to detailed legal criteria.

---

[95] Simma, Bruno and Dirk Pulkowski. Leges specials and self-contained regimes. In: Crawford, James, Alain Pellet, Simon Olleson a Kate Parlett. *The law of international responsibility*. op. cit., p. 141.
[96] World Bank. *Comments of the World Bank (IBRD and IDA) on the Responsibility of International Organizations adopted by the International Law Commission on First Reading in 2009.*

3. International Organizations under International Development Law and Accountability

3.1 Introduction

There is a certain necessity to secure at least certain degree of accountability of International Organizations in order to secure their legitimacy and reputation, the smoothness of development process, and abnegate or repudiate negative public reactions. The development efforts directly interfere with the lives of the people. Put in other words "*In more general terms, a stakeholder (such as a farmer displaced by a hydroelectric power plant) can seek to make the decision-makers in the project accountable for their actions.*"[97] In this regard, there shall be granted a corresponding right to *fair procedure* or a right to seek remedies as well. For this reason, the International Organizations of the IDL undertook to create accountability architectures to serve these needs and purposes.

This Chapter is focused on setting the accountability architecture into the broader context of existence and operation of the International Organizations of IDL. Given the paradigmatic dichotomy that reigns in this system, it may be distinguished between two main approaches to development: anthropocentric and economic. The focus is thus put onto the role of the United Nations as the pioneer of the former and the World Bank as a representative of the latter. These approaches are essential for the dwellings upon accountability, as the International Organization are covering in their efforts solely those activities, which they deem to be fundamental to their mandates. Therefore they transpire into the accountability architecture and further determine the object of the accountability relations.

The International Organizations are described in their fundamental institutional and paradigmatic aspects, in order to shed the light onto the differences in between the existent approaches to human rights, and environmental and social concerns that transpire into the accountability design. Then the Chapter introduces the human rights-based approach of the

[97] Sarkar, Rumu. *IDL: Rule of Law, Human Rights & Global Finance*. op. cit, p. 81.

United Nations and the economics-based concerns of the World Bank Group in order to discern the opinion spectrum.

3.2 United Nations

The United Nations is doubtlessly one of the main players of the International Development System, whereas the international development forms one of the three main pillars of the UN. The UN itself is not directly involved in the development assistance in the field, whereas its undertakings are rather carried by a range of specialized agencies and funds. Since 1997,[98] UN groups its development agencies into the UNDG in order to unify and streamline the efforts of the complex system of its specialized agencies. The UNDG itself is a loose association of a variety of funds, programs, specialized agencies, and other institutional units. Within the UNDG, the UNDP is awarded the leading role, with the Administrator (the main officer) of the UNDG sitting as chairman thereof charged with briefing the Secretary General on its progress.

It must be noted, that in the decision-making process, the development efforts are steered through the UNGA and other organs that decide through the simple majority of votes, whereas the large number of developing States usually tends to outvote the developed ones. The voting margin retained by the Group of 77 and China means there is a control over majority of the vote in the UNGA that has implications to the control over the development system as well.[99] One of the results of this institutional design is that the developed countries prefer to channel their development efforts and financing through the WB.

One of the main issues that the UN has to face in its development effort is the redistribution of mandates and funding among all its agencies that sometimes tends to cause tensions and certain inefficacies in the system. The allegations of the absence of holistic and

---

[98] The decision to establish the UNDG was taken upon the endorsement of report "*Renewing the United Nations: A Programme of Reform*" pioneered by then Secretary General Kofi Annan by the General Assembly. See also UN Doc. A/51/950. *Renewing the United Nations: A Programme for Reform. Report of the Secretary General.* 14 July 1997; United Nations Development Group. *About the UNDG* [online], retrieved 20 December 2016. Available at: https://undg.org/home/about-undg/.

[99] Chesterman, Simon, Thomas M. Franck a David Malone. *Law and practice of the United Nations: documents and commentary*. New York: Oxford University Press, 2008. ISBN 978-0-19-530842-6.

comprehensive approach, usually named as the goal of "delivering as one" are very frequently raised within the discourse. There are also certain voices that suggest that the UN should undertake to gain more coordinative role throughout the whole International Development System.

3.2.1 Mandate and its substantive content

The mandate of the United Nations in the field of international development primarily stems from its constituent instrument, the Charter of the United Nations. The founding document of the UN, the Charter is inherently based on principles of humanity and solidarity that it comes with no surprise that even the field of international development the concerns for human rights are predominant. The UN agencies that are charged with international development have to bear, and comply with, the commitments made in the Charter; this orientation resulted in an *anthropocentric* (mankind-oriented) approach to development, which puts the human in the centre of all efforts, only circumstantially admitting other concerns.

There are numerous links to the aforementioned. It starts with the commitment in the Preamble of the Charter "*to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small*."[100] Furthermore, it is among the purposes and principles of the UN, there is an intention "*to achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion*."[101] These standpoints serve as stepping stones for further policy setting throughout the whole UN system, resulting in the rights-based approach. This is characterized by the underlying concept that "*[h]uman rights provide a means of empowering all people to make decision about their own lives rather than being the passive objects of choices made on their behalf.*"[102]

---

[100] UN Charter, Preamble.
[101] UN Charter, Article 1.
[102] United Nations Development Programme. *A Human Rights-based Approach to Development Programming in UNDP – Adding the Missing Link*. p. 1.

Despite the general orientation of the UN, it has numerously acknowledged that the weight of the human rights concerns must be emphasized at all levels of decision-making process, especially in relation to the international development. This resulted in various programmes and efforts. One of the first signs thereof was the pronouncement of the right to development in 1986.[103] The right to development, sometimes criticized to be "*right to anything*"[104], shall be nothing less than "*an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized*."[105] Further efforts in this regard were undertaken by the former Secretary General of the UN Kofi Annan, who relentlessly stated that "*There can be no peace without development, no development without peace, and neither without human rights.*"[106] On this notion and various strategies enacted by Kofi Annan vaguely follows the Human Rights up Front initiative, which was launched by his successor, Bank Ki-Moon in late 2013. Even this shall make human rights a "*system-wide core responsibility.*"[107] The up Front is, among other reasons, partially a response to the allegations of severe human rights violations committed by the UN peacekeeping forces, and other UN personnel that put the main mission in the field of development thereof at risk.[108]

2.2.3 Accountability architecture

The accountability architecture of United Nations disambiguates into UN-wide platforms and particular systems pertaining to each of its Specialized Agencies and Funds, respectively. In this spirit, each Specialized Agency is to a certain extent accountable to ECOSOC, one of the main organs of the UN. Furthermore both the UN and the Specialized Agencies and Funds are

---

[103] UN Doc. A/RES/41/128. *Declaration on the Right to Development*. 4 December 1986.
[104] These concerns were voiced especially and unsurprisingly by the developed nations. Such opinion is captured for example in Kirchmeier, Felix. The Right to Development – where do we stand? State of the debate on the Right to Development. In: *Dialogue on Globalization.* 23, July 2006. Friedrich Ebert Stiftung.
[105] UN Doc. A/RES/41/128. Declaration on the Right to Development. 4 December 1986. Article 1 (1).
[106] UN Doc. A/95/2005. *In larger freedom: towards development, security and human rights for all. Report of the Secretary-General*. 21 March 2005.
[107] United Nations Development Group. *Human Rights up Front Initiative.* [online] Retrived on 20 December 2016. Available at: https://undg.org/home/guidance-policies/country-programming-principles/human-rights/rights-up-front-initiative/.
[108] United Nations Secretary General. Human Rights up Front: A summary for staff. Available at: http://www.un.org/News/dh/pdf/english/2016/Human-Rights-up-Front.pdf.

accountable to the Member States for the deliverance of its mandates. This transpires into general decision-making process in the UN as well as into a sort of *Donor States Accountability*. The latter applies especially in case of Funds, such as the UNDP, where the accountability is secured through special competent bodies. If the Member State contributes to the fulfillment of the purpose of the particular limb of the UN, there are enhanced ways of holding the Fund accountable. An example of this is the Executive Board of the UNDP, which comprises of 36 member States operating on a rotational basis, whereas the head of the Administrator of the UNDP updates the Executive Board regularly on the outcomes of UNDP undertakings.

When it comes to institutionalized units that serve accountability concerns, especially relevant are the United Nations Board of Auditors and the Joint Inspection Unit. The United Nations Board of Auditors should serve as independent external auditors. Pursuant to its establishing resolution, its task is to "*[...] conduct the audit under the provisions of this resolution in such manner as it thinks fit and may engage commercial public auditors of international repute.*"[109] It reports to the General Assembly, by which it is a means of securing accountability of the UN towards its Member States, with no implications for international responsibility; hence it falls solely within accountability mechanisms. The Joint Inspection Unit (the "JIU") is a group of inspectors coming from national supervision bodies. The powers of the inspectors are defined in the Statute of the JIU as follows: "*The Inspectors shall have the broadest powers of investigation in all matters having a bearing on the efficiency of the services and the proper use of funds.*"[110] The Joint Inspection Unit refers to the organization that adopts its Statute concerning its matters in the form of reports, notes and confidential letters.[111] UNDP adopted the Statute and is thus subject to the control thereof.[112] As the information provided by the JIU is weighed by the competent organs of the participating organization, in case of UNDP the JIU reports to the Executive Board. In this regard, this is again a means of securing accountability, including funds efficiency, towards Member States, and Donor States in particular.

---

[109] UN Doc. General Assembly Resolution 74 (I). *Appointment of External Auditors*. Clause (e).
[110] UN Doc. General Assembly Resolution, Fifth Committee 31/192. *Statute of the Joint Inspection Unit,* Article 5 (1).
[111] Ibid. Article 11 (1).
[112] For a full list of participating organizations, see: https://www.unjiu.org/en/partners/Pages/Participating-Organizations.aspx.

Concerning UNDP's accountability system in particular, its foundation was laid by General Assembly resolution 26/88, and further reaffirmed by General Assembly resolution 59/250.[113] Currently, the current system was implemented upon the Decision 2007/29 of the UNDP Executive Board.[114] Here the Executive Board requested that the UNDP (jointly with the United Nations Population Fund) submits "*[…] an oversight policy that also defines the concepts of accountability and transparency as well as disclosure and confidentiality in the management of [its] operational activities[.]*"[115] Upon this call, the UNDP defined accountability as "*the obligation to (i) demonstrate that work has been conducted in accordance with agreed rules and standards and (ii) report fairly and accurately on performance results vis-à-vis mandated roles and/or plans.*" [116] Concerning the subjects, to which the UNDP considers itself directly accountable, these are 1) the so-called "*programme countries*", i.e. the hosting states of development assistance, 2) project beneficiaries, i.e. individuals and communities, and 3) donors, i.e. the member States contributing to the funding of the UNDP activities.[117]

In terms of content, the UNDP's accountability system consists of an accountability framework and an oversight policy.[118] The former encompasses thorough range of activities, including monitoring and analysis, various policies and processes, whereas the latter is directed at other stakeholders, and comprises reporting, evaluation and reassurance measures.[119] In addition thereto, the UNDP distinguishes among organizational, coordination, programmatic and staff accountability, within efforts to cover all branches of its involvement.[120] The UNDP internal accountability unit, the Office of Audit and Investigations, which is the primary accountability body within UNDP, also reviews any misconduct in relation to the internal policies and UN Standards of Conduct in accordance with the UNDP Legal Framework for Addressing

---

[113] UN Doc. A/RES/59/250. *Triennial comprehensive policy review of operational activities for development of the United Nations System*, p. 3, Clause 8., p. 10, Clauses 58 and 59.
[114] United Nations Development Programme. *Executive Board* [online] Retrieved 14 February 2017. Available at : http://www.undp.org/content/undp/en/home/operations/executive_board/overview.html.
[115] UN Doc. DP/2008/2, Decision 2007/29 *Internal audit and oversight: UNDP, UNFPA and UNOPS*, 22 June 2007, p. 24, Clause 11.
[116] UN Doc. DP/2008/16/Rev.1. *The UNDP accountability system: Accountability framework and oversight policy*, p. 4, Clause 3.
[117] Ibid, p. 5, Clause 5.
[118] Ibid, p. 6, Clause 10.
[119] Ibid, p. 6, Clauses 11 and 12.
[120] Ibid, p. 9, Part D.

Non-Compliance. Due to its scope of operation, which includes fraudulent conduct, misrepresentations and other infringements, it falls outside the scope of this Paper. UNDP is also subject to external UN oversight by the units described above. UNDP set up its own Audit Advisory Committee to assist the Administrator with the delivering of the policies, Office of Audit and Investigations that investigates internal misconduct and Evaluation Office, which provides input concerning revision of policies.[121] In addition to the above, in 2015 the UNDP also set up the Social and Environmental Compliance Review and Stakeholder Response Mechanism, which is an accountability mechanism that shall be described in the next Section.

2.3 World Bank

The term World Bank (hereinafter referred to as the "WB") refers to the International Bank for Reconstruction and Development and the International Development Association. Ever since its formation in 1944, the World Bank has served as a platform for facilitation of the development aid through granting loans for projects in developing countries with the overarching objective of eradication of poverty. Due to its nature of a *public* and *development* organization,[122] to the broad scope of its mandate and operation, as well as because of its past wrongs, the World Bank has been under close scrutiny from both its member states as well as the public and civil society. In light of this, the World Bank has been regularly updating its accountability architecture. This resulted in significant developments in this field, as it gave rise to the very first international accountability mechanism, the World Bank Inspection Panel.

2.3.1 Structural fundamentals of the WB

As mentioned above, the World Bank consists of two separate entities. Each of them has its own founding document, the Articles of Agreement that determine the institutional and ideological fundamentals thereof. The two arms differ in numerous issues, including its purposes. The primary purpose of the IBRD is "*including the restoration of economies destroyed or disrupted by war, the reconversion of productive facilities to peacetime needs and the*

[121] Ibid, p. 16, Clauses 48 and following.
[122] Ebrahim, Alnoor and Steve Herz. Accountability in Complex Organizations: World Bank Responses to Civil Society. In: *Harvard Business School Working Knowledge.* p. 3.

encouragement of the development of productive facilities and resources in less developed countries."[123] The IBRD Articles of Association, however, list also the promotion of private foreign investment, growth of international trade, and international investment in general. Hence the IBRD represents a hybrid development aid institution based on commercial purposes. On the other hand, the primary purpose of IDA is " *economic development, increase productivity and thus raise standards of living in the less-developed areas of the world included within the Association's membership, in particular by providing finance to meet their important developmental requirements on terms which are more flexible and bear less heavily on the balance of payments than those of conventional loans, thereby furthering the developmental objectives of the International Bank for Reconstruction and Development and supplementing its activities.*"[124] Such delimitation of purposes and competence also draws on the relation between the two institutions, whereas the IBRD is the prevailing actor, although the IDA expressly retains institutional and financial independence.[125]

Institutionally, the World Bank belongs to the World Bank Group, whereas the relation between the World Bank and the WBG is that World Bank is bound by the common WBG internal directives, but may also adopt its own operational and other policies. Concerning the relationship between the World Bank and the UN, the World Bank is a specialized agency of the UN, by means of an ad hoc agreement between the World Bank and ECOSOC pursuant to the Articles 57 and 63 of the Charter. The WBG also serves as an observer to the UNDG.

2.3.2 Membership structure and large donors

The members of the IBRD and IDA are supposed to subscribe funds as shares of the capital stock. Here the business-like model transpires, whereas large donors, i.e. the members who subscribe substantially higher amounts, are given a wide range of privileges, including, but not limited to, enhanced influence on World Bank operation. It comes as no surprise that the list of major donors to the World Bank infrastructure, does not bring up too much astonishment, as it

---

[123] Articles of Agreement of International Bank for Reconstruction and Development, effective as of February 16, 1989. Article I (*Purposes*).
[124] Articles of Agreement of International Development Association, effective as of September 24, 1960.
[125] See Articles of Agreement of International Development Association, effective as of September 24, 1960. Article VI (*Organization and Management*), Section 66 (*Relationship to the Bank*).

is mostly a denomination of major actors on the world scene: China, France, Germany, Japan, United Kingdom and the United States.[126] The largest donors retain the power to substantially influence the course of the World Bank through appointment of officers or high voting power as described below. Subsequently these powers have caused that the wealthy developed nations prefer having their development investment facilitated by the WB, instead of the more mainstream and procedurally equitable UN. Simply put, if a State shall decide, which platform to use for the facilitation of its development undertakings, States with bigger budgets for development aid tend to choose WB, which enables more effective promotion of their interests and influence.

Within the IBRD voting system, the votes are weighed in such a manner, that precludes the poorer States (that are indeed in the majority), to outvote the most significant contributors to the WB's operation. In particular, the each member share of voting power amounts to the sum of the so-called "*basic votes*" and "*share votes*".[127] Generally the Bank decides by simple majority of votes. The voting system of the IDA is just as much linked to the shareholder power therein, as it accords 500 basic votes to each member, plus one additional vote for each $ 5,000 of the initial subscription.[128] The voting rights, albeit crucial in the decision-making, are not the only domain, where the World Bank largely favors big donors before the other members. In the design of its institutional framework, the IBRD Articles of Association vest in each of the five largest donors the power to appoint their own Executive Director. The remaining seven Executive Directors of the panel of twelve are then appointed by the remaining governors within the Board of Governors, excluding those of members that already have chosen their Executive Director. This is a rather diplomatic way how to secure the like-minded majority of big donors even among the Executive Directors. From the structure of World Bank membership, it can be easily concluded that it is highly unlikely that like-minded countries (mostly those that would belong to the UN

---

[126] See World Bank. IBRD Subscriptions and Voting Power of Member Countries [online]. Available at: http://siteresources.worldbank.org/BODINT/Resources/278027-1215524804501/IBRDCountryVotingTable.pdf, and WORLD BANK. IDA Voting Power of Member Countries [online]. Available at: http://siteresources.worldbank.org/BODINT/Resources/278027-1215524804501/IDACountryVotingTable.pdf.

[127] Articles of Agreement of the International Bank for Reconstruction and Development, Article 5 (*Organization and Management*), Section 3 (*Voting*).

[128] Articles of Agreement of the International Development Association, Article VI (*Organization and Management*), Section 3 (*Voting*).

groups of EU, and WGAO), would turn out incapable of consenting on at least three governors, and thus secure the majority for the opinion of large donors among the Executive Directors smoothly. This is especially relevant, since, as described below, the Executive Directors dispose of wide-ranging powers not just with regards to the accountability architecture, but also its practical operation. The IDA Executive Directors are *ex officio* those of the IBRD.

2.3.3 Safeguard Policies and Accountability Architecture

In case of the World Bank, the paradigmatic setting is reflected especially in the scope of review within the accountability architecture, not the design thereof per se. The accountability concerns are focused on the maintenance of the WB internal policies; therefore the paradigmatic orientation of the WB determines which interests are going to be ascribed greater weight within the process. In this regard, the World Bank has been historically reluctant to acknowledge the human rights concerns to be legitimate in terms of its policy setting.

In order to fully discern ideological foundation of the WB, it is handy to closely examine the respective Articles of Agreement. The main ideological standpoint is that the World Bank shall be predominantly occupied with concerns regarding economical effectiveness. Human rights are not namely mentioned in the document. Precisely, this approach may be tracked to IBRD Articles of Association Article III (*General Provisions Relating to Loans and Guarantees*), Section 5 (*Use of Loans Guaranteed, Participated in or Made by the Bank*), alinea b) which states as follows:

> "*The Bank shall make arrangements to ensure that the proceeds of any loan are used only for the purposes for which the loan was granted, with due attention to considerations of economy and efficiency and without regard to political or other non-economic influences or considerations.*"[129]

This standpoint expressly renounces any consideration made to *political* or *other non-economic influences or considerations*, without giving interpretation to clarify the meaning of the terms

[129] Articles of Agreement of the International Bank for Reconstruction and Development, Article III (*General Provisions Relating to Loans and Guarantees*), Section 5 (*Use of Loans Guaranteed, Participated in or Made by the Bank*).

used. Furthermore there are identical articles that contain express prohibition of any political activity in both IBRD and IDA Articles of Association, which states as follows:

> "*The* [IBRD/IDA] *and its officers shall not interfere in the political affairs of any member; nor shall they be influenced in their decisions by the political character of the member or members concerned. Only economic considerations shall be relevant to their decisions, and these considerations shall be weighed impartially in order to achieve the purposes stated in Article I.*"[130]

This paradigmatic orientation caused distress and subsequent dismissal of various accountability concerns in projects, where the client (the country in which the project was undertaken) was as thoroughly engaged, as any accountability proceedings would inevitably affect such client as well. As *Horta* puts it, the problem with the WB's approach to the human rights in a nutshell is the statement included in the inspection report pertaining to the 2001 World Bank projects in Chad, namely the Petroleum Development and Pipeline Project, Management of the Petroleum Economy Project, Petroleum Sector Management Capacity Building Project. The statement reads as follows:

> "*The Bank is concerned by human rights in Chad as elsewhere, but its mandate does not extend to political human rights.*"[131]

Curiously enough, this limitation does not apply to all human rights, but solely the "*political ones*". In this spirit World Bank standards tend to prefer the development pertaining to the economic, cultural and social rights and especially focus onto the protection of environment. This transpires into the Operational Policies (also called Safeguard Policies) that are protected under the accountability architecture. The Safeguard Policies may be divided into environmental, social and legal ones. The environmental ones concern a wide range of issues, including special norms for the Environmental Assessment. On the other hand, the ones that dwell upon the communities influenced by the investments, there are solely two policies relating thereto: the OP 4.12 on

---

[130] IBRD Articles of Agreement, Article IV (*Operations*), Section 10 (*Political Activity Prohibited*), and IDA AoA, Article V (*Operations*), Section 6 (*Politcal Activity Prohibited*).
[131] Horta, Corinna. Rhetoric and Reality: Human Rights and the World Bank. In: *Harvard Human Rights Journal, Vol. 15,* p. 227.

Involuntary Resettlement and OP 4.10 concerning Indigenous Peoples. Given the wide range of WB undertakings, this seems rather narrow.

Some commentators claim that the WB has been also subject to the anthropocentric tendencies. But even if such anthropocentric transition indeed took place, it still pertains mostly to the acknowledgement of the importance of social and economic rights, whereas the civil and political ones are still a controversial point in the policies.[132] There are some distinct efforts that could be linked to such paradigmatic shift nonetheless, perhaps most striking example is the newly issued WBG Gender Strategy for 2016 – 2023.[133]

The commitments in the Operational Policies reach beyond the necessary range of the Articles of Association. They mirror, to a certain extent, general obligations under human rights law, and norms pertaining to the protection of environment. As described above, the legal nature of the obligations that WB undertook is disputable and the doctrine is not unanimous on whether they constitute international obligations. It is safe to say, however, that at least to a certain extent, the obligations are commitments directed on protection of reputation and legitimacy. The lack thereof could cause the diminishment in funding and subsequently adversely affect the development process. Also it may be discerned that there must have been certain Donor State pressure as well. Other possible explanation is rather a circular argument; if World Bank is predominantly concerned with the economic aspects of its projects, one might contend that the marginal costs of human rights' violations are outweighed by the pros of maintaining a healthy balance, or appearances, of efforts made for its amelioration. If we ascend to this premise, the human rights concerns are no longer a political issue, but rather a managerial question, henceforth acceptable.

Speaking of the setting of the accountability architecture, it does not differ too much in the case of the WB compared to the UNDP as described above. WB also has a plethora of internal review platforms, e.g. the Independent Evaluation Group, Internal Auditing Department

---

[132] Horta, Corinna. Rhetoric and Reality: Human Rights and the World Bank, op. cit, p. 228

[133] World Bank Group. *World Bank Group Gender Strategy (FY16-23) : Gender Equality, Poverty Reduction and Inclusive Growth*. World Bank, Washington, DC, 2015, License: CC BY 3.0 IGO. Available at: https://openknowledge.worldbank.org/handle/10986/23425.

and Department of Institutional Integrity, various advisory panels and thorough system of reporting and disclosure.[134] Again, just like in the case of the UNDP, the WB distinguishes between four levels of accountability that concern the following: 1) staff, 2) project, 3) policy and 4) board governance.[135]

[134] Parish, Matthew. An Essay on the Accountability of International Organizations. op. cit., p. 291.
[135] Ebrahim, Alnoor and Steve Herz. Accountability in Complex Organizations: World Bank Responses to Civil Society. op. cit., p. 15.

3. Specific accountability mechanisms of IDL

3.1 Introduction

It may be distinguished between two main forms of securing accountability of International Organizations of IDL: continuous monitoring and evaluation undertakings within the International Organization, and subjecting the International Organization to a review of an administrative panel that acts towards the individual. The latter are the so-called international accountability mechanisms (whom shall be referred to interchangeably also as accountability mechanisms), which are endemism of the IDL; hence they deserve further analysis.

Outside the IDL, it may be generally distinguished among three main groupings of existent accountability mechanisms: (i) judicial bodies, (ii) institutions of internal administrative review, and (iii) treaty bodies. In the International Development System, however, there are basically exclusively institutions of internal administrative review that are quasi-judicial mechanisms with clearly defined internal objective, serving both the International Organization that established them as well as to a certain extent the individual that seeks remedy.

The main reasoning behind granting an individual a right to bring such claims may be connected to reputation, legitimacy and/or to the promotion of the good governance norms as described in the previous chapter. Otherwise it could be also a reaction to the current setting of the International Organizations, whereas it has been summed up as follows:

> "*Denying persons affected by their decisions due process or legal review has rendered International Organizations subject to the obvious criticism that they float in a legal vacuum, their actions unaccountable to any judicial authority whatsoever. To deflect that criticism, several such organizations have established their own internal review mechanisms.*"[136]

The efforts of the International Organizations of the IDL to establish such mechanism instead of residing to existent means of remedy is given mostly by their nature as well as the function of the

[136] Parish, Matthew. An Essay on the Accountability of International Organizations. op. cit., p. 284.

accountability mechanisms. It must be emphasized that the function of the accountability mechanisms is predominantly to aid the governing bodies of the respective International Organizations to rectify the undesirable state. If, over the course of the process, compensation to an individual is granted, then it is rather a circumstantial occurrence. Furthermore, although the International Organizations possess legal personality of international law, they are not States, thus they are incapable of acceding to the regular judicial bodies or treaty bodies. Secondly, even if such accession was possible, it would be very likely that the International Organizations would hesitate to do so, while their own accountability mechanisms are observed and somehow limited into a certain range. Lastly, there would be a pressing issue, whether it would actually make sense for the International Organization to accede to such mechanisms, for rather practical reasons.

The accountability mechanisms are then panels or other entities serving the mission of internal administrative review. They stem from traditional institutes of international law: the commissions of inquiry. They are, however, directly linked to a particular organization and are of a permanent nature, which affects their setting, main rules of operation, and leads to the creation of a consistent decision practice. The first International Organization of the IDL to establish such mechanism was the World Bank. Its Inspection Panel has been a breakthrough in this field of international law, and therefore most of the existent accountability mechanisms draw from the lessons learned from the Inspection Panel.

The purpose of this chapter is to firstly describe the fundamental features of these accountability mechanisms and their status under international law. Secondly, since there are many similarities among these accountability mechanisms, their common features and denominators shall be summarized in the second part. Third part of this chapter examines more closely the existent accountability mechanisms, whereby the emphasis and focus is put onto the features in which they differ. This Chapter does not, however, aspire to give an exhausting overview or comparison of the existent accountability mechanisms under the system of IDL.[137]

---

[137] The reasoning behind this is that such analyses have been made already by numerous authors, and the comparison would be in my opinion of no further benefit whatsoever. While I was drafting this Chapter, I relied on comparison charts made by the International Accountability Mechanism Network, as well as on the wonderful comparative study undertaken by Daniel Bradlow in Bradlow, Daniel. Private Complaints and International

3.1.1 Main features of the existent accountability mechanisms

The main feature of any accountability mechanism of IDL is that it provides direct *locus standi* to an individual in a possibility of bringing one's claim of material adverse effect caused by the International Organization. The existent accountability mechanisms are mostly founded on features similar to the well-known mechanisms for peaceful settlement of international disputes. Accountability mechanisms are above all sharing some features with the commissions of inquiry as well as conciliation bodies. They are not, however, fully susceptible of falling into either of these categories. In particular, the model of accountability mechanisms may be tracked to the commissions of inquiry. In particular, the genesis of the Inspection Panel suggests a great deal of inspiration from the independent commission to study the World Bank's involvement in the *Sardar Sarovar Water Project* in India, which was appointed in 1991. There were even proposals that the accountability mechanism should be nothing more than a permanent version of such commission with a broader mandate; these were taken into consideration and definitely had some influence over the creation of the project, albeit they were not fully accepted.[138]

The accountability mechanisms perform basic range of functions: firstly they serve problem-solving, as they aim at settling disputes between the International Organization and the adversely affected individual. To this end, they conduct investigations, whereas compensation to the affected individuals may be granted either directly, or within the framework of a wider, systematic solution. Second function pertains to the compliance review, *i.e.* that the accountability mechanism examines, whether the International Organization adhered to its own internal policies. Some of the mechanisms also enjoy advisory powers, as they may advise the International Organization on the best means of remedying the undesirable state.

3.1.3 Common features of international accountability mechanisms

There is a plethora of similar features that were replicated from one accountability mechanism to another. This is partially because of the World Bank leading role that has been

---

Organizations: A Comparative Study of the Independent Inspection Mechanisms in International Financial Institutions. In: *Georgetown Journal of International Law,* Vol. 36, Issue 2 (2005), pp. 403-494.

[138] Bradlow, Daniel D. International Organizations and Private Complaints: The Case of the World Bank Inspection Panel. In: *Virginia Journal of International Law,* Vol. 34, Issue 3 (Spring 1994), pp. 553 – 614, p. 563.

briefly outlined above and shall be further emphasized throughout this chapter. Secondly, the mechanisms themselves vaguely group into the Independent Accountability Mechanisms Network (the "IAMnet"). This serves as a virtual network of the mechanisms, and a platform for exchange of information, ideas, and assistance. All those accountability mechanisms that are subject of review of this thesis are members of this network.[139] Hence the international accountability mechanisms exchange lessons learned, which supports continuous mutual convergence.

The common features can be mostly divided into these fields: (i) institutional setting, (iii) request-based procedure, (iii) range of examination, (iv) multi-staged procedure, and (v) non-binding nature of recommendations

Ad (i): the international accountability mechanisms tend to be a part of the organizational charts of their respective organizations, albeit formally and materially independent in their reviews. They are no stand-alone mechanisms with their own separate mandates and secretariats. Rather they are driven within the main structure of the respective International Organization, also in terms of human resources aspects.[140] Secondly, and perhaps even more importantly, the selection and removal of officials into these mechanisms is entirely or at least partially at the discretion of the main governing bodies of the International Organization. Lastly, the governing bodies are very closely involved in the procedure of revision, whereas they exchange communications with the reviewing panel and otherwise cooperate. This institutional setting raises concerns as of independence of the accountability mechanisms.

Ad (ii): this is largely procedural aspect that stems from the limited options in design of the accountability mechanisms. When the World Bank Inspection Panel was set in 1993, it laid down a structure that has been largely followed throughout the system. Here, the procedure of accountability review is triggered through a request of two or more individuals, which may file through a representative. The precondition is that such individuals were adversely affected by the

---

[139] For a full list of IAMnet participants, please see: http://independentaccountabilitymechanism.net

[140] For example in case of the IAD MICI the cooperation between the IAD Board of Executive Directors and the IAD Human Resources Cooperation in terms of issues related to human resources management is actually stressed in the mandate document of the MICI itself.

operational policies or otherwise delimitated documents. Thus the accountability mechanisms serve as recourse mechanisms, and do not have the powers to investigate independently *ex officio*.

Ad (iii): the range of examination, i. e. the reference documents that must be complied with is usually linked to the internal regulation of the International Organization which are the operational policies (or otherwise named rules). It must be noted that the accountability mechanism either examines the policies in their entirety (e.g. World Bank IP), or its mandate specifically designates only some of the operational policies (e.g. the MICI). Henceforth the accountability mechanisms do not have the competence to examine in general, whether a breach of international law, or international human rights law occurred. Their mandate is therefore substantially reduced to the issues of compliance with the designated OPs or other safeguards.

Ad (iv): just like the request-based methodic, even this is a procedural matter arising out of the World Bank Inspection Panel model. The procedure is multi-staged into two to three phases. First is eligibility phase, which serves for the international accountability mechanisms to reject certain requests that are inadmissible for example because they fall outside the scope of review of the international accountability mechanism or otherwise do not fulfill the necessary criteria. Second is sometimes the consultation phase, which is even voluntary in case of some of the mechanisms (e.g. mechanisms of the development banks other than the WB), which should serve conciliatory resolution of the issue and possibly with settlement without the necessity of further steps. Third is the core of the review and investigation, the fact-finding phase, which results in the non-binding recommendations. Second and third phases are sometimes merged in one procedurally.

Ad (v): the non-binding nature of observations is inherently bound in these types of mechanisms. In theory this model works, because the accountability mechanisms serve predominantly as sources of institutional review of the procedures of the respective International Organization. Nonetheless, as the individuals sitting on the panel cannot have a say in the design of the concerned projects, for this reason the members sitting accountability mechanism are personally incapable of proposing more holistic and structural changes to the respective International Organization. It makes therefore sense that the governing entity overtakes the findings and incorporates them by itself. But even though this model seems perfectly reasonable,

there have been cases in the past, where the executive bodies disregarded the non-binding recommendations even in cases of flagrant and grave wrongs. Perhaps the most pressing example of this scenario occurred in the 1995 *PLANAFLORO* claim, where WB Executive Directors decided against full inspection conducted by the IP, amidst substantiated flagrant violations of WB operational policies, and instead chose to conduct institutional review of the project.[141]

Please note, that these observations represent mostly a simplified deduction, whereas each of the accountability mechanisms has its idiosyncratic features that are sometimes unmatched in the system. Hence the next section examines further these features in the particular accountability mechanisms: the UNDP SECRM, World Bank Inspection Panel and IMF/MIGA CAO, and further selected accountability mechanisms.

3.3 UNDP

The UNDP international accountability mechanism - the Social and Environmental Compliance Review and Stakeholder Response Mechanism (the SECRM) is relatively new, as it was established by UNDP in June 2014, coming into effect as of 1 January 2015.[142]. It secures the compliance with the Social and Environmental Standards and the Social and Environmental Screening Procedure, as well specific commitments in relation to a particular programme or project.[143] In general, there are three overarching branches that are safeguarded through these principles: the human rights, gender equality and women's empowerment, and environmental sustainability.

As the name of the international accountability mechanism indicates, it comprises of two sections: one is the Social and Environmental Compliance Unit ("SECU") that investigates allegations of non-compliance with the standards. Second is the Stakeholder Response

---

[141] More on the PLANAFORO controversy for example Hunter, David. Amazon Burning and the World Bank: Lessons from the Second World Bank Inspection Panel Claim. op. cit.

[142] United Nations Development Programme. UNDP's Social and Environmental Standards, effective on 1 January 2015. Available online at: http://www.undp.org/content/undp/en/home/librarypage/operations1/undp-social-and-environmental-standards.html.

[143] United Nations Development Programme. Social and Environmental Compliance Unit and Stakeholder Response Mechanism Brochure. 22 December 2014, p. 3. Available online at: http://www.undp.org/content/undp/en/home/librarypage/operations1/secu-and-srm-brochure.html.

Mechanism ("SRM") that works as a mediation platform to address claims as well as other disputes in relation to the UNDP projects.[144] The claimants may choose either one. The procedure in specific scenarios is focused mostly on the resolution of systemic mishaps in the design of the project.

The operation of both units has been rather scarce so far, given they are in operation solely for two years; the SECU and SRM both received two claims from identical requesters, SRM on the top of it one more other request.[145] Given the short time frame, no cases have been resolved yet.

The SECU review is again trigged throng a complaint, filed by a person or a community "*who believes the environment or their wellbeing may be affected by a UNDP-supported project or programme*."[146] In order to have its case heard by SRM, any person or community must file a request for response from the SRM, if they deem to have been or are likely to be adversely affected by any of the UNDP projects. There is, however, a precondition, that such requester must have communicated the raised concerns to the UNDP or its partners first.

3.3 World Bank Group

The essential blocks of accountability construction in terms of the WBG are 1) the Inspection Panel pertaining to the World Bank as the public arm of the WBG, and 2) the Compliance Advisor and Ombudsman of IFC and MIGA, the organizations aimed at private sector lending. Fundamentally the role of these accountability mechanisms is to give recourse and enable remedial procedures to those who have been adversely affected by the relevant bodies. Its operation is based on assessing complaints from affected parties and individuals.

---

[144] United Nations Development Programme. *Social and Environmental Compliance Review and Stakeholder Response Mechanism* [online]. Available at: http://www.undp.org/content/undp/en/home/operations/accountability/secu-srm.html.
[145] Case registries are available online, at https://info.undp.org/sites/registry/secu/SECUPages/SECUSummary.aspx for SECU and https://info.undp.org/sites/registry/srm/SRMPages/SRMSummary.aspx for SRM.
[146] United Nations Development Programme. Social and Environmental Compliance Unit and Stakeholder Response Mechanism Brochure, op. cit., p. 3

In terms of structure, the two accountability mechanisms fall within the range of the so-called "*project accountability*".[147] They are predominantly directed at ensuring compliance, whereas they enforce the internal policies of the respective entities, with an emphasis on Safeguard and Operational Policies.

3.3.1 World Bank: Inspection Panel

When the World Bank Inspection Panel (hereinafter referred to as "the Panel" or "the IP") was established back in September 1993, it was somehow revolutionary step. Not only because the World Bank was to be held accountable for adversely affecting the wellbeing of the people on the ground, but also because the World Bank was the first International Organization, outside of the European Union, to be subjected to accountability claims without any involvement of the governments.[148] Its pronouncements are not binding, and serve rather as a finger to be pointed at systematic mishaps that are subsequently fixed through accountability of political character.

As it was indicated above, the circumstances that are usually identified as having caused the establishment of the Panel are linked to the *Sardar Sarovar* controversy, where the World Bank entered into a loan agreement with India with objective of acceleration of building of Narmada Dam. There were vast and severe human rights violations, including forced resettlement, exclusions of rehabilitation processes. The allegations were so grave, that the World Bank was pressed by both public and its Member States to conduct an independent review of this project, which indicated a lack of proper environmental and social assessment studies that should have been undertaken before the construction works even begun.[149] Upon these developments, the Panel was eventually created by IBRD resolution 93-10, and IDA Resolution 93-6, whereas both these texts are identical.[150]

---

[147] Ebrahim, Alnoor and Steve Herz. Accountability in Complex Organizations: World Bank Responses to Civil Society. op. cit., p. 9.
[148] Hunter, David. *Amazon Burning and the World Bank: Lessons from the Second World Bank Inspection Panel Claim.* op. cit., p. 1
[149] Komala, Ramachandra. Sardar Sarovar: An Experience Retained? In: *Harvard Human Rights Journal,* 19 Harv. Hum. Rts. J. 275 (2006).
[150] International Bank For Reconstruction And Development, International Development Association, Resolution No. IBRD 93-10, Resolution No. IDA 93-6: *The World Bank Inspection Panel* of 22 September 1993.

In terms of procedural and institutional arrangements, there are three members of the Panel that are appointed by the Executive Directors upon consultation with the President. The procedure of the Inspection Panel is triggered through a request for inspection lodged by two or more requesters who deem to have been adversely affected by World Bank project or policies. The affected party must "*demonstrate that its rights or interests have been or are likely to be directly affected by an action or omission of the Bank as a result of a failure of the Bank to follow its operational policies and procedures with respect to the design, appraisal and/or implementation of a project financed by the Bank (including situations where the Bank is alleged to have failed in its follow-up on the borrower's obligations under loan agreements with respect to such policies and procedures) provided in all cases that such failure has had, or threatens to have, a material adverse effect*."[151] The *material adverse effect* must be proven to have been caused exclusively by the non-adherence to the operational policies of the World Bank, not by any other party to the project, such as the hosting state. This is essentially a reflection of *ascription of influence* as was described above. It must be stressed that the mandate of the Inspection Panel is procedural, not substantive, whereas it solely aids the Bank management to direct its efforts into deciding whether the respective operational policies were complied with or not. [152]

The process is divided into three stages: first is eligibility screening resulting in Inspection Panel recommendation, whether a full investigation should be conducted. The decision on the conduct of the investigation is made by the Board of Directors. If the decision is affirmative, the second stage - the full investigation, including review of World Bank project documentation, field visits, meeting with requesters as well as even consulting scientific literature on the topic,[153] comes on the order. Upon the closure of this phase, the Inspection Panel gives further recommendations, which are then assessed by the Board. The Board also decides on further actions. The whole process is closed in the third phase, the post-investigation stage, where the

[151] Ibid, alinea 12.
[152] Parish, Matthew. An Essay on the Accountability of International Organizations. op. cit., p. 292.
[153] The Inspection Panel At The World Bank. *Operating Procedures*, effective as of April 2014, alinea 54.

Inspection Panel usually gives return visit and the Management of the World Bank secures implementation of the respective Action Plan.[154] The process is constrained by strict time limits.

One of the safeguards providing for the public review of the work of the Inspection Panel is the provisions regarding disclosure of proceedings. The resolution states that the World Bank shall make "*publicly available*" the request for an inspection, the recommendation and report on the case of the Inspection Panel as well as the decision of the Executive Directors.[155] This creates basically an accountability structure for accountability mechanism, which shall be considered desirable in terms of transparency and ensuring a fair and clear redress for the requestors.

The Inspection Panel also may, through its interpretation of the operational policies, influence the approach of the World Bank.[156]

3.2.2 IFC-MIGA: Compliance Advisor Ombudsman

The international accountability mechanism pertaining both to the WBG's IFC and MIGA is the Compliance Advisor Ombudsman (the "CAO"). It is charged with examination of environmental and social concerns arising out of projects of IFC and MIGA respectively. Although named as ombudsman, it is still a recourse mechanism for individually lodged complaints. Its mandate is vested in the Operational Guidelines[157] and in Terms of Reference.[158] It serves in three roles: dispute resolution, compliance and advisory role. The parties may choose between dispute resolution and/or compliance, advisory role is fulfilled solely with respect to the WBG president.

In contrast to the World Bank IP, the CAO reports directly to the President of the WBG, and informs the Board of the WBG on individual complaints. This shall have positive effect on CAO's independence. Regularly, it updates the boards of IFC and MIGA respectively on its activities in general. This differs from the other international accountability mechanisms, as the

---

[154] Ibid, p. 8.
[155] International Bank For Reconstruction And Development, International Development Association, Resolution No. IBRD 93-10, Resolution No. IDA 93-6, para 25.
[156] Bradlow, Daniel D. International Organizations and Private Complaints: The Case of the World Bank Inspection Panel.op. cit., p, 579.
[157] Office of The Compliance Advisor/Ombudsman (CAO). *Operational Guidelines*, effective as of March 2013.
[158] Office off The Compliance Advisor/Ombudsman (CAO). *Terms of Reference*.

mechanism is in itself to a large extent separated from the agencies, whose projects it examines. This draws bigger independence, and hence reliability of the mechanism.

The Operational Guidelines also specify the possibilities in dispute resolution. The mandate specifically enables the CAO to facilitate joint fact-finding, mediation and conciliation proceedings as well as other means of settling the respective concerns.[159] This signifies a considerable range of undertakings that may be taken independently.

Specific is also the Compliance Appraisal Process, which may be initiated in four case scenarios; first is when a CAO Vice President requires so in relation to any project-specific or systemic concerns, or upon a request coming from the President or senior management of the respective entity, either IFC or MIGA. It may also be triggered in case that the CAO determines that it should be commenced, or if CAO Dispute Resolution arm decides to transfer the case thereto.[160] The latter scenario extends the mandate of CAO beyond the mere request-based procedure.

3.3 IDB Group: Independent Consultation and Investigation Mechanism

The Independent Consultation and Investigation Mechanism (the "MICI") serves as the independent accountability body of the IDB, and the Inter-American Investment Corporation (the "IIC"). The IADB and IIC accountability mechanisms were initially established as separate bodies, in 1994 and 2002 respectively. In 2010, the mechanism was revised and merged for the two institutions altogether. Depending on which of these two institution was providing the respective financing, that is whose operational policies are relevant for the case at hand, the MICI procedure is governed either by the rules pertaining to the IDP (the MICI-IDB Policy), or to the IIC rules (the MICI-IIC Policy). The MICI also examines two different types of policies: the IDP and IIC policies pertaining to public and private sector, as well as the IIC private sector

[159] Office of The Compliance Advisor/Ombudsman (CAO). *Operational Guidelines*, op. cit., p. 14.
[160] Ibid, p. 16.

guidelines. In between the years 2010 and 2016, MICI has received 104 complaints, whereas 11 cases are still pending.[161]

As it was already outlined above, the MICI greatly resembles the Inspection Panel in terms of its structure, operation, and especially in terms of the relation in between MICI and the Board of Executive Directors of IADB. Although the panel put the word "*independent*" even in its name, and it is also regularly stressed, it faces the very same shortcomings. The board of executive directors (of the IADB or IIC respectively) must authorize investigation, the results thereof are again reported to the respective board, and it also has the final decision on any further follow-up. Furthermore, it is mandatory that the requesters firstly approach the IADB Bank Management or the IIC Management respectively. The appointment and removal of the MICI Director is at the discretion of the Board of Executive Directors of IADB, albeit from a selection made by a specially designated ad hoc panel. Although the panel gives certain safeguards pertaining to the independence of the mechanism, it is still personally well interlocked with its establishing International Organization.

The MICI serves as (i) an investigation mechanism, (ii) a provider of information concerning its investigation, (iii) last-resort mechanism for the adversely affected individuals.[162] Just like the IP, MICI examines the proper maintenance of the operational policies of the three organizations. The operational policies of the IADB cover a wide range of issues that are parallel to those of the IP. For example, the main operational policies of the IADB that the MICI safeguards concern access to information, environment and safeguards compliance, disaster risk management, public utilities, involuntary resettlement, gender equality in development, and indigenous peoples.[163] On the other hand, the IIC expressly states, solely its Environmental and Social Sustainability Policy and Disclosure and Social Sustainability Policy are relevant for the

---

[161] Inter-American Development Bank. *The Independent Consultation and Investigation Mechanism* [online]. Available at: http://www.iadb.org/en/mici/publications,19738.html.

[162] Inter-American Development Bank. *Policy of the Independent Consultation and Investigation Mechanism of the IDB*. 16 December 2015, p. 5 Available at: http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=40792853.

[163] Inter-American Development Bank. *About the IDB*. p. 4. Available at: http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=39730266.

investigation.[164] This draws the attention to the number of safeguarded operational policies compared against the entire amount of operational policies of IADB. The range provided by the IADB covers a spectrum of human rights and equality issues, which seem progressive, and more comprehensive, compared to the limited scope given by the IIC that resembles the World Bank hesitance.

The MICI procedure, which is virtually identical for both IADB and IIC, is triggered through a request, similarly as the World Bank IP. One of the compulsory requirements are that the requesters describe their efforts to consult the issue with the IADB management first.

The investigation scenario followed by the MICI is divided into two phases: (i) the Consultation Phase, and (ii) the Compliance Review Phase. The former is a voluntary and rather flexible tool that serves as a mediation and settlement facilitator. One possible result of the Consultation Phrase can be a settlement agreement among the Parties, which may then monitored by the MICI.[165] The latter is then an investigation and fact-finding procedure. Curiously, the requesters have to indicate, whether they desire the Consultation Phase or the Compliance Review Phase, or opt for both, or in case of IADB procedure even just request further information.[166] If they choose both, they proceed sequentially, beginning with Consultation Phase. If the Compliance Review Phase begun the Consultation Phase cannot be reopened.[167]

Another interesting feature in the MICI procedure is the possibility of suspension of execution of IADB project. While the request does not in itself convey the power to halt the execution thereof, the MICI Director may recommend to the Board or to the Donors Committee to suspend it. This may happen if "*serious irreparable Harm may result from the continued execution of a Bank-Financed Operation.*"[168] This extends the competence of the MICI procedure beyond the thresholds set for the other accountability mechanisms.

---

[164] Inter-American Development Bank. *Policy of the Independent Consultation and Investigation Mechanism of the IIC*. op. cit., p. 3 Available at: http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=40151002.
[165] Inter-American Development Bank. *About the IDB*,op. cit., p. 5
[166] Inter-American Development Bank. *Policy of the Independent Consultation and Investigation Mechanism of the IDB*, op. cit., p.8
[167] Ibid, p. 9.
[168] Ibid.

3.4 Other development banks: AsDB, EBRD and AfDB

The international accountability mechanisms of the remaining development banks also largely resemble the structure of the World Bank IP, merged with some of the features firstly introduced by MICI, and serve as examples of the model international accountability mechanism structure laid at the outset of this Chapter. The mechanisms undergo regular review of their procedures and operation, whereas there was a massive wave of revisions around the year 2010, which resulted, again, in a sort of convergence. The international accountability mechanisms consist of two means of redress: problem-solving or dispute resolution unit and entities of compliance review.

The international accountability mechanism pertaining to the AsDB is the so-called Accountability Mechanism. It deploys two units for the purpose of the internal administrative review. Henceforth it consists of a problem solving function, which is led by the Special Project Facilitator, and of the Compliance Review Panel that mirrors the World Bank IP.

The international accountability mechanism of EBRD is the Project Complaint Mechanism, which mirrors the same structure. This mechanism, however, contrary to others, is the only one not disposing of advisory function in relation to the Board of Directors or any other body of the EBRD. On the other hand, upon the finding of non-compliance, the Bank Management does not have the possibility of immediate rejection of the findings, but is supposed to prepare a Management Action Plan to address the findings and its appropriateness.[169]

The last development bank to establish its own international accountability mechanism so far was the AfDB, which did so in 2004 through the establishment of the Independent Review Mechanism. Its structure is a bit different, whereas it comprises of Compliance Review and Mediation Unit as well as the Roster of Experts. The international accountability mechanism is an organizational unit of the AfDB. Interesting is the formalized possibility of the requesters to turn to the international accountability mechanism, when preparing the request, whereas the

[169] European Bank for Reconstruction And Development. *Project Complaint Mechanism (PCM), Rules of Procedure*, op. cit., p. 8.

international accountability mechanism is bound to provide guidance and information, as well as even meet with the potential requesters.[170]

[170] African Development Bank Group. *The Independent Review Mechanism*. *Operating Rules and Procedures*, effective as of January 2015, p. 3.

4. Conclusion

Accountability architecture may be understood as the set of procedural safeguards that altogether create the framework for the pursuit of the relevant accountability concerns. Under the present circumstances of the setting of the International Organizations of the IDL, it represents mostly voluntary commitments thereof that balance out their untouchable position, whereby they have immunity before municipal courts and there is no international court with appropriate jurisdiction. Since accountability consists of both primary and secondary norms that create both international obligations and obligations *sui generis*, whose nature is yet to be determined if necessary, the tools that altogether form the accountability architecture are varied in nature accordingly to their respective purposes.

Accountability architecture hence comprises firstly of tools of continuous review and analysis and various commitments to good governance that secure the accountability of the International Organization towards its Member States. Through disclosure and transparency, as well as participation of public and especially non-governmental organizations in the process, certain degree of accountability towards the public is secured as well. The second range of tools then are directed at the accountability towards the public, and especially towards the individuals that are the beneficiaries influenced by the undertakings of the International Organization. Currently, these tools are the accountability mechanisms that represent more or less independent review bodies that are susceptible of receiving complaints from individuals and/or groups of individuals in case of breach of obligation of an International Organization. It cannot be fully determined, whether such obligation constitutes international obligation and in this sense invokes international responsibility; this, however, is not an issue that would be relevant for such accountability review, as is performed by the international accountability mechanisms. It may be stated that the accountability mechanisms are not primary platforms for the invocation of secondary obligation. For this reason, responsibility may be triggered, but this is rather an academic issue over the course of the proceedings. In any case, if international responsibility is triggered, it is rather circumstantial and out of focus of the respective accountability mechanism. The spotlight of the review is put onto the lessons learned and remedies of systemic mishaps in the International Development System. Even the function of remedying the individual for the adverse effect on one's life seems to be rather secondary under the current framework.

4.1 Satisfactoriness of the current accountability architecture

4.1.1 General setting of the International Organizations

The main standpoint of the position of the International Organizations stems from the wide-ranging immunities that they enjoy. In this sense, barely any claimant, not to mention subject of international law has the standing to effectively pursue its interests against International Organization, should it commit any wrong (be it internationally wrongful act, or "just" a reprehensible conduct not prohibited by international law). The International Organizations thus act as *legibus solutes*, the untouchable entity that cannot be dragged to a court even if it e.g. abuses its employees or illicitly displaces people, or otherwise infringes upon other's rights. There is no court whatsoever that would be able to hear a case against an International Organization.

As the CAIO puts it "*Maximum accountability can be achieved by a combination of mechanisms, tailor-made for the level and forms of accountability and for the category of claimant, and thus for the rights and interests that are in need for protection.*" [171] The international accountability mechanisms definitely form one of the most important tools of securing accountability that have been developed so far. The main reasons they were established may have been driven rather by the pursuit of legitimacy and public approval, nonetheless their significance for the rights of an individual or for the general principles of rule of law and justice, is currently rather understated. If these mechanisms are given further and much more significant push, both in terms of independence as well as funds, they could form a notable tool in the fight for justice to the individual, transparency in IDL, and for the rule of law, which are all noble principles to fight for. It may be solely hoped that these efforts to establish various accountability mechanisms, to enable an individual to file a complaint against an International Organization does not remain a residual occurrence in the field of IDL.

[171] International Law Association, Committee on Accountability of International Organizations. *Final Report of the Berlin Conference*, 2004, p. 45.

In order for these accountability mechanisms to function properly, however, their systems must be further developed and various concerns and criticisms must be answered first. Only then could be the accountability architecture properly built and maintained.

It must be also noted, that accountability mechanisms, as useful as they are or might be, do not address the whole issue in terms of securing full accountability and responsibility of International Organizations. As it has been noted, their field of operation covers solely fragments of the illicit conduct of International Organizations, and is definitely not self-saving.

4.1.2 Current accountability mechanisms

Definitely, there is hardly any system, and especially under public international law, that would exist fully free of criticism. Over the course of my research, I have identified some of the most pressing points with regards to the existent accountability mechanisms that must be solved. These concern mostly the effectiveness of the remedy, which is, in my opinion, directly linked to the pursuit of legitimacy of the respective International Organizations. The three areas that urgently need addressing are: 1) the insufficient independence of the accountability mechanisms, 2) non-adherence to the basic procedural principle, and 3) broad discretion upon the course of the proceedings put in the hand of the executive organs of the respective International Organization. The fragmentation of the accountability mechanisms may also result in inconsistency in interpretation of similar principles.[172]

Concerning the lack of proper independence of the accountability mechanisms, this seems to be the most notorious difficulty.[173] The accountability mechanisms are usually composed of officers, in relation to which there may be substantial doubt as to the independence. For example in the case of Inspection Panel, the Resolution provides for the preclusion of the conflict of interest, however, in a limited time range. This means that the Inspection Panel is mostly composed of its former employees; therefore there is a substantial risk of issue conflict. Furthermore, although this is mostly a facility issue, the accountability mechanism does not exist

[172] Parish, Matthew. An Essay on the Accountability of International Organizations. op. cit., p. 329.
[173] Ibid, p. 324.

separately of the main International Organization; hence its full independence in terms of personnel may be subject to doubt that seems undesirable under the accountability architecture.

In terms of the second criticism, it may be stated that the individual in the process serves merely as a vehicle for bringing a more systemic claim. Once the accountability mechanism takes over (if the request is substantiated), the requester has no disposition thereof whatsoever. The accountability mechanism does not hold hearings, or deliver documents to the requesters. Also, upon the issuance of the report, the complainants are not given a chance to respond thereto; hence the adversarial principle is not being upheld.[174] The Inspection Panel and other accountability mechanisms accordingly also do not provide for the right of the requester to the response to communications.[175] It cannot be even thought of that equality of arms would be maintained within the proceedings.

Lastly, especially speaking of Inspection Panel there is a significant involvement of the Bank management throughout the whole process. The resolution allows a broad range of consultation between the Inspection panel and the World Bank, and especially its legal department. Under the provisions of the Resolution, the Inspection Panel is still somehow interlocked with the World Bank. In case of the other accountability mechanisms, the procedure is virtually the same. Lastly, every decision of any of the existent accountability mechanism is subject to the seal of approval by the highest body of the respective International Organization. Hence, even if the requests are well-founded, well substantiated and indeed severe infringements upon rights of the requesters occurred, the main organ may reject it. The only obstacle is reputational damage, but on the other hand, there are several precedents of such decision without too broad of consequences.

---

[174] Ibid, p. 292.
[175] Bradlow, Daniel D. International Organizations and Private Complaints: The Case of the World Bank Inspection Panel. op. cit., p, 579, p. 585.

4.2 Suggestions for improvement of accountability architecture

The setting of the perfect shape of accountability architecture is rather alchemic exercise, whereas the several functions thereof must always be borne in mind. The sufficient and appropriate accountability architecture takes into account both the necessity of holding the International Organization accountable, as well as the need for maintenance of sufficient autonomy thereof. Therefore, certain proposals would not be feasible given present circumstances. Such an example would be the establishment of an independent court to whose jurisdiction the International Organizations should be subjected, and which would grant standing to both States and individuals.

More feasible options could mirror in addressing the concerns stated above. The main issue here would be for the International Organization to deliberately expose itself to the truly independent review. The benefits of such step are questionable, whereas the claims of diminishing flexibility are still vital. The accountability architecture is designed as to provide *at least some redress* to the adversely affected people, while also serving broader purposes of combating wide systemic issues within the International Organizations. The question is whether the review would still help in the lessons-learned process even if the main bodies of the International Organization would be precluded from assuming a very powerful role in the review procedure.

Perhaps the least intrusive way of strengthening the accountability architecture to the benefit of the affected individual, would be to take at least small steps. First of all, there are accountability mechanisms (such as the IP) that demand very detailed substantiation of the requests, which requires proficiency in the Operational Policies as well as thorough knowledge of the procedural issues. In this regard, those accountability mechanisms that balance towards more informal procedures that do not set the threshold as high seem to serve the purpose better. Nonetheless, less formalized procedures require proper oversight, as these are more exposed to arbitrariness.

List of Sources

Official Documents

African Development Bank Group. *The Independent Review Mechanism*. *Operating Rules and Procedures*, effective as of January 2015, p. 3.

Articles of Agreement of International Bank for Reconstruction and Development, effective as of February 16, 1989.

Articles of Agreement of International Development Association, effective as of September 24, 1960.

Charter of the United Nations (including Statute of the International Court of Justice)

European Bank for Reconstruction And Development. *Project Complaint Mechanism (PCM), Rules of Procedure*, effective as of May 2014, p. 8.

International Bank For Reconstruction And Development, International Development Association, Resolution No. IBRD 93-10, Resolution No. IDA 93-6: *The World Bank Inspection Panel* of 22 September 1993.

The Inspection Panel At The World Bank. *Operating Procedures*, effective as of April 2014, Alinea 54.

Office of The Compliance Advisor/Ombudsman (CAO). *Operational Guidelines*, effective as of March 2013.

Office off The Compliance Advisor/Ombudsman (CAO). *Terms of Reference*.

UN Doc. A/RES/41/128. *Declaration on the Right to Development*. 4 December 1986.

UN Doc. A/51/950. *Renewing the United Nations: A Programme for Reform. Report of the Secretary General.* 14 July 1997

UN Doc. A/66/10. *International Law Commission. Draft articles on the responsiblity of International Organizations.* Published also in Yearbook of the International Law Comission, 2011, vol. II, Part Two.

UN Doc. A/95/2005. *In larger freedom: towards development, security and human rights for all. Report of the Secretary-General*. 21 March 2005.

UN Doc. General Assembly Resolution 74 (I). *Appointment of External Auditors*.

UN Doc. General Assembly Resolution, Fifth Committee 31/192. *Statute of the Joint Inspection Unit,* Article 5 (1).

UN Doc. A/RES/59/250. *Triennial comprehensive policy review of operational activities for development of the United Nations System*, p. 3, Clause 8., p. 10, Clauses 58 and 59.

UN Doc. DP/2008/2, Decision 2007/29 *Internal audit and oversight: UNDP, UNFPA and UNOPS*, 22 June 2007, p. 24, Clause 11.

UN Doc. DP/2008/16/Rev.1. *The UNDP accountability system: Accountability framework and oversight policy*, p. 4, Clause 3.

Judicial Decisions

Applicability of article VI, section 22, of the Convention on the Privileges and Immunities of the United Nations, Advisory Opinion of 15 December 1989.

Differences Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights, Advisory Opinion, 29 April 1999

Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt, Advisory Opinion of 20 December 1980, p. 89.

Reparation for Injuries Suffered in the Service of the United Nations, Advisory Opinion, 11 April 1949.

Susana MENDARO, Appellant, v. The WORLD BANK, a/k/a International Bank for Reconstruction and Development. United States Court of Appeals, District of Columbia Circuit. Decided September 27, 1983. 717 F.2d 610 (1983).

Books

Čepelka, Čestmír a Pavel Šturma. *Mezinárodní právo veřejné*. Praha: Beck, 2008. Právnické učebnice. ISBN 978-80-7179-728-9.

Čepelka, Čestmír, Dalibor Jílek a Pavel Šturma. *Mezinárodní odpovědnost*. Brno: Masarykova univerzita, 2003. Acta Universitatis Brunensis. Iuridica. ISBN 80-210-3057-7.

Chesterman, Simon, Thomas M. Franck a David Malone. *Law and practice of the United Nations: documents and commentary*. New York: Oxford University Press, 2008. ISBN 978-0-19-530842-6.

Crawford, James a Ian Brownlie. *Brownlie's principles of public international law*. Eighth edition. Oxford: Oxford University Press, 2012. ISBN 978-0-19-965417-8.

Crawford, James, Alain Pellet, Simon Olleson a Kate Parlett. *The law of international responsibility*. Oxford: Oxford University Press, 2010. Oxford commentaries on international law. ISBN 978-0-19929697-2.

Faix, Martin. *Law of international organisations.* Olomouc: Palacký University Olomouc, 2012. Textbooks. ISBN 978-80-244-3213-7.

Nguyen Quoc Dinh, Patrick Daillier a Alain Pellet. *Droit international public: formation du droit, sujets, relations diplomatiques et consulaires, responsabilité, reglement des différends, maintien de la paix, espaces internationaux, relations économiques, environnement*. 7e éd. Paris: Librairie générale de droit et de jurisprudence, 2002. ISBN 2-275- 02174-4

Sarkar, Rumu. *IDL: Rule of Law, Human Rights and Global Finance*. Oxford: Oxford University Press, 2009. ISBN 978-0-19-539828-1.

Sarooshi, Dan. *International Organizations and their exercise of sovereign powers*. Oxford: Oxford University Press, 2007. Oxford monographs in international law. ISBN 978-0-19-922577-4.

Šturma, Pavel a Zuzana Trávníčková. *Imunity v mezinárodním právu. Praha: Česká společnost pro mezinárodní právo*, 2016. ISBN 978-80-87488-25-6.

Scholarly articles and chapters in collective monographs

Bradlow, Daniel. Private Complaints and International Organizations: A Comparative Study of the Independent Inspection Mechanisms in International Financial Institutions. In: *Georgetown Journal of International Law,* Vol. 36, Issue 2 (2005), pp. 403-494.

Bradlow, Daniel D. International Organizations and Private Complaints: The Case of the World Bank Inspection Panel. In: *Virginia Journal of International Law,* Vol. 34, Issue 3 (Spring 1994), pp. 553 – 614.

Czapliński, Wladyslaw. Responsibility of International Organizations for Activities ultra vires. In Šturma, Pavel. *Právní následky mezinárodně protiprávního chování: pocta Čestmíru Čepelkovi k 80. narozeninám*. Praha: Ediční středisko PF UK, 2007. ISBN 978-80-85889-83-3.

Dennis, Ian. Instrumental Protection, Human Right or Functional Necessity – Reassessing the Privilege against Self-Incrimination. In: *Cambridge Law Journal*, Vol. 54, Issue 2 (July 1995), pp. 342 – 376.

Ebrahim, Alnoor and Steve Herz. Accountability in Complex Organizations: World Bank Responses to Civil Society. In: *Harvard Business School Working Knowledge.*

Gailmard, Sean. Accountability and Principal-Agent Models. In Bovens, Mark, Goodin, Robert E. and Thomas Schillemans. *The Oxford Handbook of Public Accountability.* Oxford: Oxford University Press 2014. ISBN 9780199641253, p. 4.

Hafner, Gerhard. Accountability of International Organizations. In: *American Society of International Proceedings*, Vol. 97 (2003), pp. 236 – 240.

Hey, Ellen. The World Bank Inspection Panel: Towards the Recognition of a New Legally Relevant Relationship in International Law. In: *Hofstra Law and Policy Symposium*.

Holder, William E. Can International Organizations Be Controlled? Accountability and Responsibility. In. *American Society of International Law Proceedings*, Vol. 97 (2003), pp. 231 – 246.

Horta, Corinna. Rhetoric and Reality: Human Rights and the World Bank. In: *Harvard Human Rights Journal, Vol. 15,* p. 227.

Hunter, David. Amazon Burning and the World Bank: Lessons from the Second World Bank Inspection Panel Claim. In: *Environmental Law & Policy: Eco-Notes*, 1 Eco-Notes 1 1995.

Kirchmeier, Felix. The Right to Development – where do we stand? State of the debate on the Right to Development. In: *Dialogue on Globalization.* 23, July 2006. Friedrich Ebert Stiftung.

Komala, Ramachandra. Sardar Sarovar: An Experience Retained? In: *Harvard Human Rights Journal,* 19 Harv. Hum. Rts. J. 275 (2006).

Orakhelashvili, Alexander. Institutional Aspects of the Accountability of International Organizations. In: *International Organizations Law Review*, Vol. 2 Issue. 1 (2005), pp. 57 – 102.

Parish, Matthew. An Essay on the Accountability of International Organizations. In: *International Organizations Law Review,* Vol. 7, Issue 2 (2010), pp. 277 – 342.

Reinisch, August. Securing the Accountability of International Organizations. In: *Global Governance*, Vol. 7, Issue 2 (April – June 2001), pp. 131 - 150.

Singer, Michael. Jurisdictional Immunity of International Organizations: Human Rights and Functional Necessity Concerns. In: *Virginia Journal of International Law*, Vol. 34, Issue 1 (Fall 1995), pp. 53 – 166.

Strauss, Peter L. Private Standards Organizations and Public Law. In: *William & Mary Bill of Rights Journal*, Vol. 22, Issue 2 (December 2013), pp. 497 – 562.

Šturma, Pavel. Vztah odpovědnosti států a odpovědnosti mezinárodních organizací. In GERLOCH, Aleš a Pavel ŠTURMA. *Odpovědnost v demokratickém právním státě*. Praha: Univerzita Karlova v Praze, Právnická fakulta, 2013. Právo a společnost. ISBN 978-80-87146-81-1.

Wellens, Karel. Accountability of International Organizations: Some Salient Features. In: *American Society of International Law Proceedings,* Vol. 97 (2003), pp. 241 -245.

Wirth, David A. Legitimacy, Accountability, and Partnership: A Model for Advocacy for Third World Environmental Issues. In: *100 Yale L. J. 2645 (1990-1991)*, pp. 2645 – 2666.

Soft law and other sources

African Development Bank Group. *The Independent Review Mechanism*. *Operating Rules and Procedures*, effective as of January 2015, p. 3. Available at: http://www.afdb.org/fileadmin/uploads/afdb/Documents/Compliance-Review/Revised_IRM_Operating_Rules_and_Procedures_2015.pdf.

DAC High Level Meeting. Communiqué, 19. 2. 2016, Annex I: Principles of ODA Modernisation on Private Sector Instruments. Available at: <http://www.oecd.org/dac/DAC-HLM-Communique-2016.pdf>.

Department for International Development and The Rt Hon Justine Greening MP. Changes to official aid rules. In: News Stories, GOV.UK. 19. 2. 2016 [retrieved 15. 3. 2016]. Available at: <https://www.gov.uk/government/news/changes-to-official-aid-rules>.

Inter-American Development Bank. *About the IDB*. Available at: http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=39730266.

Inter-American Development Bank. *Policy of the Independent Consultation and Investigation Mechanism of the IDB*.

Inter-American Development Bank. *The Independent Consultation and Investigation Mechanism* [online]. Available at: http://www.iadb.org/en/mici/publications,19738.html.

Inter-American Development Bank. *Policy of the Independent Consultation and Investigation Mechanism of the IDB*. 16 December 2015, p. 5 Available at: http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=40792853.

Inter-American Development Bank. *About the IDB*. p. 4. Available at: http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=39730266.

International Law Association, Committee on Accountability of International Organizations. Report of the London Conference, 2000.

International Law Association, Committee on Accountability of International Organizations. *Final Report of the Berlin Conference*, 2004.

OECD Data. *Net ODA* [online]. Available at: https://data.oecd.org/oda/net-oda.htm.

Organization for Economic Co-operation and Development. *Official development assistance - definition and coverage* [online]. Available at: <http://www.oecd.org/dac/stats/officialdevelopmentassistancedefinitionandcoverage.htm>.

Robinson, J. Redefining ODA: An opportunity for more comprehensive development. In: International Alert. 10. 2. 2014 [retrieved 12. 3. 2016]. Available at: <http://www.international-alert.org/blog/redefining-oda#sthash.XjDwAAU5.dpbs>.

United Nations Development Group. *About the UNDG* [online], retrieved 20 December 2016. Available at: https://undg.org/home/about-undg/.

United Nations Development Group. *Human Rights up Front Initiative.* [online] Retrived on 20 December 2016. Available at: https://undg.org/home/guidance-policies/country-programming-principles/human-rights/rights-up-front-initiative/.

United Nations Development Programme. *A Human Rights-based Approach to Development Programming in UNDP – Adding the Missing Link*.

United Nations Development Programme. *Executive Board* [online] Retrieved 14 February 2017. Available at : http://www.undp.org/content/undp/en/home/operations/executive_board/overview.html.

United Nations Development Programme. UNDP's Social and Environmental Standards, effective on 1 January 2015. Available online at: http://www.undp.org/content/undp/en/home/librarypage/operations1/undp-social-and-environmental-standards.html.

United Nations Development Programme. Social and Environmental Compliance Unit and Stakeholder Response Mechanism Brochure. 22 December 2014, p. 3. Available online at: http://www.undp.org/content/undp/en/home/librarypage/operations1/secu-and-srm-brochure.html.

United Nations Development Programme. *Social and Environmental Compliance Review and Stakeholder Response Mechanism* [online]. Available at: http://www.undp.org/content/undp/en/home/operations/accountability/secu-srm.html.

United Nations Secretary General. Human Rights up Front: A summary for staff. Available at: http://www.un.org/News/dh/pdf/english/2016/Human-Rights-up-Front.pdf.

World Bank. *About the World Bank* [online], retrieved 10 February 2017, available at: http://www.worldbank.org/en/about.

World Bank. *Comments of the World Bank (IBRD and IDA) on the Responsibility of International Organizations adopted by the International Law Commission on First Reading in 2009.*

World Bank. IBRD Subscriptions and Voting Power of Member Countries [online]. Available at: http://siteresources.worldbank.org/BODINT/Resources/278027-1215524804501/IBRDCountryVotingTable.pdf,

World Bank. IDA Voting Power of Member Countries [online]. Available at: http://siteresources.worldbank.org/BODINT/Resources/278027-1215524804501/IDACountryVotingTable.pdf.

World Bank Group. *World Bank Group Gender Strategy (FY16-23) : Gender Equality, Poverty Reduction and Inclusive Growth.* World Bank, Washington, DC, 2015, License: CC BY 3.0 IGO. Available at: https://openknowledge.worldbank.org/handle/10986/23425.

Stavba a struktura odpovědnosti mezinárodních organizací v oblasti mezinárodního rozvojového práva

1. Úvod

Cílem této práce je poskytnout dostačující základ pro další diskuzi ohledně odpovědnosti mezinárodních organizací v širokém slova smyslu.

Vědeckou otázkou této diplomové práce je "*Je současný způsob ukotvení odpovědnosti mezinárodních organizací v oblasti mezinárodního rozvojového práva za porušování mezinárodněprávních norem i vlastních interních předpisů postačující?*" Za tímto účelem práce zkoumá právní základ i faktické dopady jednotlivých řešení v rámci různých dostupných systémů. Práce se přitom pohybuje v oblasti mezinárodního rozvojového práva, a sice zejména z důvodu existence zvláštních odpovědnostních mechanismů. Právě tento způsob zajištění odpovědnosti (ve smyslu *accountability*) mezinárodních organizací nemá v jiné oblasti zvláštní části mezinárodního práva veřejného obdoby.

1.1 Mezinárodní rozvojové právo a mezinárodní rozvojový systém

Mezinárodní rozvojové právo dosud není vnímáno jako ustálená oblast mezinárodního práva veřejného, což se projevuje i neexistencí řádných právních definic klíčových pojmů. Mezinárodní rozvojové právo lze nicméně vymezit jako soubor právních norem, jimiž se řídí právní poměry vznikající či existující v rámci mezinárodního rozvojového systému. Mezinárodní rozvojovým systémem rozumíme souhrn vztahů mezi subjekty mezinárodního rozvojového práva, jež jsou vedeny snahou posilovat lidský rozvoj a podporovat potírání chudoby. Rozlišujeme mezi bilaterální a multilaterální úrovní tohoto systému. Prameny mezinárodního rozvojového práva jsou prameny ve smyslu článku 38 Statutu Mezinárodního soudního dvora, interní pravidla přijímaná mezinárodními organizacemi, jakož i řada dokumentů právně nezávazného charakteru. Není zcela jisté, zdali jsou pravidla, jimiž se subjekty mezinárodního rozvojového práva ve svých vzájemných vztazích řídí, výhradně normami mezinárodního práva v pravém slova smyslu, či nakolik se jedná pouze o dobrovolně převzaté morální závazky.

Subjekty mezinárodního rozvojového práva členíme na státy, mezinárodní organizace a soukromé osoby (tj. nevládní organizace a jednotlivce či jejich skupiny). V mezinárodním rozvojovém systému též vystupuje celá řada výkonných, poradních a inspekčních orgánů, výborů a dalších entit, jež vykonávají rozličné mandáty, nicméně nejsou nadány mezinárodněprávní subjektivitou. Mezinárodní organizace v oblasti mezinárodního rozvojového práva dále členíme na mezinárodní finanční instituce a ostatní mezinárodní organizace, mezi něž řadíme zejména Organizaci spojených národů. Do kategorie mezinárodních finančních institucí patří na jedné straně Mezinárodní měnový fond a Mezinárodní finanční korporaci, na straně druhé stojí multilaterální banky, jichž v mezinárodním rozvojovém systému působí celá řada na univerzální i regionální úrovni. Příkladem je zejména Světová banka (sestávající z Mezinárodní banky pro obnovu a rozvoj a Mezinárodní asociace pro rozvoj), lokálními multilaterálními bankami jsou například Evropská banka pro obnovu a rozvoj, Asijská rozvojová banka, Africká rozvojová banka, Interamerická rozvojová banka a celá řada dalších organizací lokálního charakteru. V rámci zmíněné OSN se specializované agentury a fondy zaměřené na rozvoj sdružují do Rozvojové skupiny OSN, v níž má zásadní vliv Rozvojový program OSN.

1.2 Různá pojetí pojmu odpovědnosti v mezinárodním právu veřejném

Otázka odpovědnosti mezinárodních organizací získává na důležitosti s rostoucím zapojením mezinárodních organizací do výkonu širokého spektra úkolů ve všech oblastech mezinárodních vztahů a mezinárodního práva. V důsledku širokého vykládání imunit, jež jsou mezinárodním organizacím tradičně přisuzovány, se dostávají do pozice, kdy musí být účelově vytvářeny mechanismy, jejichž cílem je zajistit odpovědnost mezinárodních organizací v celé řadě oblastí.

První a zásadní překážkou, jež musí být překonána před samotným zahájením diskuze nad touto problematikou, je otázka terminologie, která v českém právním prostředí představuje určitý oříšek. Český výraz *odpovědnost* totiž v sobě obsahově pojme anglické termíny *accountability*, *responsibility* i *liability*, zatímco též může označovat každý jeden z nich. Skutečně lze mezi zmíněnými termíny rozlišovat toliko opisem. V prvé řadě takto rozlišujeme odpovědnost za mezinárodně protiprávní činy (*angl. responsibility*), která představuje sekundární právní následky

protiprávního chování.[1] Druhým možným významem je odpovědnost jakožto odpovědnost za řádné jednání subjektu mezinárodního práva, ať již dojde k porušení norem mezinárodního práva či se jedná o legální činnost, jež se projevuje v právní, jakož i politické rovině (*angl. accountability*). Tento pojem bývá užíván ovšem v odlišných konotacích: "*[...] spíše ve významu společenské zodpovědnosti, kontroly a skládání účtu [z činnosti mezinárodních organizací]*."[2] V neposlední řadě nám též vystupuje odpovědnost (*angl. liability*), jež by se dala přímo přeložit jako ručení. V rámci mezinárodního práva lze toto ručení chápat jako povinnost subjektu nahradit škodlivé následky způsobené činnostmi, jež mezinárodní právo nezakazuje.[3]

Z důvodu výše zmíněných budu používat termín s indikací anglického výrazu tam, kde to bude nezbytné v zájmu snazší orientace v textu.

2. Mezinárodněprávní odpovědnost mezinárodních organizací

V obecné rovině mezinárodní organizace požívají výsad a imunit, a sice v rozsahu, v jakém jsou nezbytné pro uskutečňování jejich cílů, což představuje tzv. zásadu funkční nezbytnosti. Požívání imunit zejména znamená, že jsou vyňaty z jurisdikce vnitrostátních soudů. Široká míra požívaných imunit má zajistit nerušený výkon činnosti mezinárodních organizací, jejich nezávislost na členských státech, jakož i zamezit nepřiměřené legislativní zátěži. Ta by mohla nastat v případě, kdy by musela mezinárodní organizace dodržovat vnitrostátní předpisy každého státu, v němž působí. Toto se nabízí zejména v oblasti pracovního práva.

Rozsah imunit mezinárodních organizací však navzdory zásady funkční nezbytnosti bývá interpretován až do absolutní šíře. Zároveň však není v současném mezinárodním právu mezinárodní soud, do jehož jurisdikce by mezinárodní organizace spadaly. V důsledku tohoto nastavení se mezinárodní organizace dostávají do pozice absolutního nedostatku jakékoliv

---

[1] Šturma, Pavel. *Pojetí odpovědnosti v mezinárodním právu – pojmové rozlišení.* In Čepelka, Čestmír, Dalibor Jílek a Pavel Šturma. *Mezinárodní odpovědnost*. Brno: Masarykova univerzita, 2003. Acta Universitatis Brunensis. Iuridica. ISBN 80-210-3057-7, s. 573.

[2] ŠTURMA, Pavel. Mezinárodní odpovědnost za škodlivé následky činností nezakázaných mezinárodním právem. In ČEPELKA, Čestmír, Dalibor JÍLEK a Pavel ŠTURMA. *Mezinárodní odpovědnost*. Brno, op. cit., s. 67.

[3] K problematice odlišení těchto a souvisejících pojmů v českém jazyce srov. též Šturma, Pavel. *Pojetí odpovědnosti v mezinárodním právu – pojmové rozlišení.* In Čepelka, Čestmír, Dalibor Jílek a Pavel Šturma. *Mezinárodní odpovědnost*. op. cit., s. 116 a násl.

odpovědnosti a jsou pouze kontrolovány politickým tlakem svých členských států. Toto se negativně projevuje v celé řadě situací, zejména tehdy, vstupuje-li mezinárodní organizace do právních poměrů. V takovém případě je mezinárodní organizace vyňata z jurisdikce jakýchkoliv soudních orgánů i v případě např. majetkových či zaměstnaneckých sporů. Vedou se proto polemiky o možném zneužití této nedotknutelnosti mezinárodních organizací, či o možnosti vyhýbání se mezinárodněprávní odpovědnosti za protiprávní jednání (*responsibility*) státy jednáním skrz mezinárodní organizaci.

2.1 Odpovědnost (*accountability*)

Jak již bylo naznačeno výše, odpovědnost ve smyslu *accountability* v sobě pojímá odpovědnost za veškeré jednání mezinárodní organizace, tj. za řádný výkon její činnosti směřující k naplnění jejích cílů. Jejím smyslem je zejména vytvořit systém přiměřených záruk, ať už právních či politických, které mají zamezit bezprávnímu jednání ke škodě ostatních subjektů. Nejde proto jen o povinnost napravení škodlivého důsledku protiprávního jednání či vznik odpovědnostního vztahu v důsledku protiprávního jednání. Toto pojetí v sobě obsahuje též problematiku negativního vlivu na reputaci či legitimitu jednání mezinárodní organizace, jakož i nutnost odhalení systematických problémů v jejím fungování a nalézání dlouhodobě udržitelného řešení. Ve vztahu k mezinárodním organizacím mezinárodního rozvojového práva začaly hlasy volající po posílení této formy odpovědnosti nabírat na síle zejména v souvislosti s konstantním rozšiřováním sféry jejich vlivu a mandátů, jakož i s výkonem těch činností, jež jsou v podmínkách států považovány za projev suverenity.

2.1.1 Obsah pojmu

Tak jako neexistuje jednotná právní definice pojmu odpovědnosti (*accountability*), taktéž neexistuje jasný výklad obsahu tohoto neurčitého právního pojmu. V jeho rámci hrají roli nejen právní, ale i politické a ekonomické nástroje. Otázkou nicméně je, zdali by vůbec pojmové vymezení bylo ve vztahu k tak široké povinnosti vůbec vhodné.

V zásadě zde rozlišujeme zejména mezi odpovědností politickou a právní. Politická odpovědnost v sobě zahrnuje zejména nástroje spojené s ochranou pověsti mezinárodní organizace, tlak členských států, projevující se v hlasování na půdě dané mezinárodní organizace,

financování poskytnuté členskými státy či dohled veřejnosti. Právní rovina odpovědnosti v sobě zahrnuje taktéž odpovědnost za mezinárodně protiprávní činy (*responsibility*), jakož i odpovědnost za škodu způsobenou činnostmi nezakázanými mezinárodním právem (*liability*). Právní odpovědnost má svou aktivní a pasivní stránku jejího vynucování. Aktivní stránka představuje povinnost států zajistit, aby mezinárodní organizace jednala po právu. Pasivní stránka znamená, že v případě porušení odpovědnostní povinnosti je na státech, aby mezinárodní organizaci poskytly dostačující prostředky k zajištění nápravy, ačkoliv nejsou přímo adresáty této povinnosti.

2.1.2 Právní základ

Odpovědnost v sobě zahrnuje jak primární, tak sekundární normy mezinárodního práva. V tomto se zásadně liší od odpovědnosti za mezinárodně protiprávní činy, neboť ta v sobě zahrnuje pouze sekundární povinnost. Z hlediska primárních norem se jedná zejména o pravidla dobré správy a řádného plnění povinností a cíle mezinárodní organizace. Sekundární normy se do určité míry překrývají s odpovědností za mezinárodně protiprávní činy, nicméně vedle toho existuje samostatná kategorie odpovědnosti za porušení interních pravidel mezinárodní organizace. Nad dodržováním těchto norem v podmínkách mezinárodního rozvojového práva dlí mezinárodní odpovědnostní mechanismy, o nichž bude pojednáno níže.

Další otázkou v této oblasti je, zdali odpovědnostní normy představují ve své podstatě normy mezinárodního práva, jinými slovy, jestli jsou odpovědnostní povinnosti povinnostmi mezinárodněprávními. Zde se nabízí zejména obecná otázka míry mezinárodněprávních povinností mezinárodních organizací. Obecně je zřejmé, že jsou mezinárodní organizace vázány mezinárodněprávními povinnostmi v rámci svých statutů, tj. partikulárních mezinárodních smluv, jimiž jsou státy zřizovány.[4] V úvahu nicméně přichází též vázanost mezinárodních organizací mezinárodními lidsko-právními normami, mezinárodním obyčejem či obecným mezinárodním právem. V neposlední řadě je rozporné, zdali vnitřní pravidla přijímaná mezinárodními organizacemi, jež tvoří velkou část norem mezinárodního rozvojového práva, představují mezinárodněprávní závazky mezinárodních organizací. V rámci této problematiky nepřevládá

[4] Šturma, Pavel a Zuzana Trávníčková. *Imunity v mezinárodním právu. Praha: Česká společnost pro mezinárodní právo*, 2016. ISBN 978-80-87488-25-6, s. 80.

jednotný názor, přičemž je nutno též podotknout charakter daných norem není jednotný. Dá se tedy říci, že přinejmenším do určité míry existují odpovědnostní povinnosti mezinárodních organizací, založené na dobrovolně převzatých závazcích převážně morálního charakteru.

2.1.3 Subjekty odpovědnostního vztahu

V rámci odpovědnostního vztahu proti sobě vždy stojí dva subjekty, tj. první subjekt, který je odpovědný, a druhý subjekt, kterému je první subjekt odpovědný. V rámci této práce je prvním subjektem mezinárodní organizace. Na druhé straně se pak nabízí buďto členské státy či mezinárodní společenství. V úvahu též přichází odpovědnost mezinárodní organizace vůči jednotlivci či skupině jednotlivců. Tento koncept je nicméně diskutabilní, vzhledem k nejednotnému názoru doktríny ohledně mezinárodněprávní subjektivity jednotlivce. V rámci mezinárodního rozvojového práva totiž existují mezinárodní odpovědnostní mechanismy, jež umožňují, aby se jednotlivec dovolal ochrany svého práva přímo proti mezinárodní organizaci. Vzhledem k nerovnému postavení jednotlivce a mezinárodní organizace však nelze bez dalšího říct, že by mezinárodní organizace byla jednotlivci odpovědná.

2.2 Odpovědnost za mezinárodně protiprávní činy (*responsibility*)

Odpovědnost za mezinárodně protiprávní činy představuje následky porušení mezinárodněprávní povinnosti. Předpoklady pro její vznik jsou protiprávnost chování, tj. "*porušení závazku plynoucího z jakéhokoli platného pravidla mezinárodního práva, a to jak obyčejového, tak i smluvního.*" [5] a jeho přičitatelnost mezinárodní organizaci. Úprava odpovědnosti mezinárodních organizací za mezinárodně protiprávní chování navazuje do značné míry do relativně ustálené právní úpravy odpovídající odpovědnosti států. Problematika byla zpracována Komisí pro mezinárodní právo do podoby *Návrhu článků o odpovědnosti mezinárodních organizací*.

[5] Ibid, p. 584.

2.2.1 Problematika přičitatelnosti

V oblasti odpovědnosti za mezinárodně protiprávní činy je otázka přičitatelnosti daleko důležitější, nežli v odpovědnosti (*accountability*), kde přičitatelnost je daleko širšího charakteru a slouží spíše rozhraničení odpovědnosti mezi širší okruh aktérů. Na druhé straně v otázce odpovědnosti za mezinárodně protiprávní činy *Návrh článků* přičítá protiprávní čin mezinárodní organizaci, a sice v případě jednání jejího *orgánu* či *agenta*. Prominentní je zde otázka efektivní kontroly, která je jednou z implicitních podmínek přičitatelnosti. Pojmy *orgán* a *agent* jsou vykládány široce, bez ohledu na institucionální zařazení či typ mandátu dané osoby. V úvahu přichází též možnost dvojí přičitatelnosti, kdy by jeden čin byl přičitatelný jak členskému státu, tak mezinárodní organizaci.

2.2.2 Otázka aplikace režimu *lex specialis*

Návrh článků se ve svém článku 64 zabývá též problematikou aplikace zvláštních odpovědnostních režimů. Zde je nutno vymezit, zdali pravidla, jimiž mezinárodní organizace regulují svou odpovědnost a zakládají odpovědnostní mechanismy, představují takovýto tzv. *lex specialis* ve smyslu zmíněného článku. Vzhledem k nejasnostem ohledně právní povahy interních pravidel a toho, zdali se v daném případě jedná o mezinárodněprávní povinnost, se lze přiklonit spíše k negativnímu stanovisku.

3. Odpovědnost (*accountability*) ve vztahu k mezinárodním organizacím v oblasti mezinárodního rozvojového práva

Mezinárodní rozvojový systém je z hlediska přístupu k jeho objektu – mezinárodnímu rozvoji - veden zejména dichotomií mezi lidsko-právním a ekonomickým přístupem. Tyto dva přístupy se do určité míry prolínají a postupně sbližují. Promítají se ne až tolik to samotného institucionálního zakotvení odpovědnosti v rámci daných mezinárodních organizací, jako spíše do typu právních závazků, které odpovědnostní mechanismy zaručují.

První zmiňovaný je představován zejména OSN, která se vzhledem k širokému zakotvení respektu k lidským právům v Chartě OSN zaměřuje na lidsko-právní aspekty napříč svým systémem, Rozvojovou skupinu OSN nevyjímaje. Nástroje prosazení odpovědnosti v rámci OSN

rozlišujeme na ty, které se dotýkají celé entity, a partikulární, existující pouze ve vztahu ke konkrétní specializované agentuře, fondu či jejich skupinám. Příkladem prvního jsou zejména Rada auditorů OSN (*Board of Auditors*) a Společná inspekční jednotka (*Join Investigation Unit*). Co se týče odpovědnostního systému Rozvojového programu OSN, ten dělíme na odpovědnostní rámec, který představuje řada mechanismů v oblasti monitoringu a vyhodnocování, a dozorčí části, která se zabývá mj. podáváním zpráv členským státům a jiným účastníkům rozvojového procesu. Nad rámec výše uvedeného též Rozvojový program OSN v roce 2015 zřídil mezinárodní odpovědnostní mechanismus, tzv. *Social and Environmental Compliance Review and Stakeholder Response Mechanism.*

Na druhé straně názorového spektra stojí Světová banka, která prosazuje ekonomický přístup. Ten vyplývá zejména z jejích Stanov (*Articles of Association*). Stanovy totiž zakotvují, že Světová banka při své činnosti nesmí brát v úvahu politické otázky. Důsledkem toho je jednak důraz na ekonomickou efektivitu, na suverenitu partnerských států, jakož i na ta lidská práva, jež nejsou považována za politizovaná. Těmi jsou zejména práva spadající do kategorie hospodářských, sociálních a kulturních práv. Světová banka též dává velký důraz na problematiku ochrany životního prostředí. Institucionálně je její odpovědnostní systém obdobný, jako ten Rozvojového programu OSN. Její odpovědnostní mechanismus, tzv. Inspekční Panel, byl prvním mechanismem tohoto druhu, přičemž veškeré další v současnosti existující odpovědnostní mechanismy následují jeho model.

4. Odpovědnostní mechanismy v oblasti mezinárodního rozvojového práva

Odpovědnostní mechanismy v oblasti mezinárodního rozvojového práva jsou zvláštním subsystémem revizních orgánů. Spadají do kategorie tzv. quasi-soudních těles, neboť ačkoliv se zabývají kontrolou založenou na soudním modelu, postrádají charakteristiky nezávislosti a záruky spravedlivého procesu. Odpovědnostní mechanismy v rámci mezinárodního rozvojového práva představují možnost jednotlivce či skupiny jednotlivců obrátit se se svou stížností přímo na mezinárodní organizaci. Tu potom odpovědnostní mechanismus posoudí a doporučí řídícímu orgánu, zdali má provést plné šetření či nikoliv, a sice na nezávazné bázi. V případě, že je

odpověď pozitivní, provede další šetření, z něhož mohou být vyvozeny další důsledky, včetně poskytnutí kompenzace žadatelům.

Jak bylo řečeno výše, současné odpovědnostní mechanismy v zásadě vychází z modelu Inspekčního panelu Světové banky. Společné rysy nalezneme v oblastech 1) institucionálního zakotvení, 2) zahájení řízení na žádost, 3) otázce pravidel, na jejichž dodržování dohlíží, 4) vnitřního rozdělení řízení na dvě části a 5) nezávazného charakteru jejich doporučení. Veškeré níže zmíněné charakteristiky neplatí zcela jednotně ke všem odpovědnostním mechanismům, nýbrž představují hlavní tendence jejich strukturálního nastavení.

V rámci bodu 1), tj. institucionálního zakotvení, odpovědnostní mechanismy jsou zásadně součástí organizační struktury mezinárodních organizací, jimiž byly zřízeny, jakkoliv jsou formálně a materiálně nezávislé při výkonu svých mandátů. Jmenování osob do panelů těchto odpovědnostních mechanismů je taktéž právem řídících orgánů daných mezinárodních organizací. To s sebou nese značné množství pochyb ohledně jejich nezávislosti.

Bod 2) znamená, že odpovědnostní mechanismy nedisponují vlastní nezávislou inspekční pravomocí. Nemohou tedy z vlastní iniciativy provést šetření a poukázat na systémový problém mezinárodní organizace. Řízení se zahajuje pouze na žádost skupiny žadatelů, kterým však, vyjma zahájení řízení nesvědčí dispoziční zásada.

Ohledně bodu 3), mandáty mezinárodních odpovědnostních mechanismů jsou omezeny na kontrolu dodržování interních pravidel (tzv. *safeguards* či *operational policies*). Nepřísluší jim tedy široké oprávnění kontrolovat dodržování pravidel mezinárodního práva v obecné rovině. Toto je zejména dáno tím, že mezinárodní organizace odpovídá za implementaci politických rozhodnutí členských států, nikoliv za jeho matérii.

Konečně bod 4) reflektuje dvoustupňovost revizní procedury. V první fázi odpovědnostní mechanismus zkoumá pouze přípustnost žádosti a podklady s ní související, na jejímž základě poskytne doporučení, zdali se má přejít do druhé fáze plného, meritorního šetření.

Konečně k bodu 5) týkajícímu se nezávazného charakteru jejich doporučení, zde se projevuje hlavní funkce odpovědnostních mechanismů v oblasti mezinárodního rozvojového práva. Jakkoliv mohou poskytnout kompenzaci skupině jednotlivců, jejich primárním cílem je

asistovat mezinárodní organizaci při identifikaci a řešení daného problému. Proto mají řídící orgány mezinárodních organizací širokou diskreci při rozhodování, zdali bude na základě doporučení daného odpovědnostního mechanismu provedeno plné šetření či nikoliv. Precedenty z minulosti však zahrnují i situace, kdy řídící orgány doporučení odpovědnostního mechanismu odmítly i v případě závažných porušení lidských práv a norem týkajících se ochrany životního prostředí.

V současnosti funguje osm hlavních odpovědnostních mechanismů. Ty působí u všech výše zmíněných multilaterálních bank a Mezinárodního měnového fondu. Mechanismy plní tři základní funkce. V prvé řadě se jedná o řešení bezprostředních problémů, tedy řešení sporů mezi mezinárodní organizací a negativně ovlivněným jedincem. Za tímto účelem probíhají šetření, přičemž v určitých případech může dojít k přiznání kompenzace žadateli buďto přímo v rámci řízení, popřípadě v rámci následných kroků k nápravě. Druhá funkce se týká kontroly dodržování interních pravidel ze strany mezinárodní organizace. Konečně některé mechanismy disponují též poradní funkcí.

5. Závěry a doporučení

Současný způsob ukotvení odpovědnosti mezinárodních organizací v oblasti mezinárodního rozvojového práva za porušování mezinárodněprávních norem i vlastních interních předpisů postačující rozhodně není. V důsledku široké interpretace imunit mezinárodních organizací došlo k vytvoření situace praktické nedotknutelnosti mezinárodních organizací, které nejsou podrobeny jurisdikci žádného přezkumného tělesa. Stavba a struktura odpovědnosti (v angličtině *accountability architecture*) tak představuje souhrn procesních záruk a nástrojů, které dohromady tvoří protiváhy této jinak nepřípustné situace. V podmínkách současného mezinárodního rozvojového práva představuje zejména dobrovolné závazky mezinárodních organizací. Toto se projevuje v rámci širokého systémů procedur, cílů a politik v oblasti odpovědnosti, které umožňují jak výkon kontroly členských států, tak i kupříkladu zapojení veřejného dozoru či nevládních organizací. Zejména zřizováním odpovědnostních mechanismů došlo k alespoň nějakému zlepšení, jakkoliv v rovině spíše neprávní.

Samotné odpovědnostní mechanismy však ještě rozhodně budou muset být předmětem dalších revizí. Zejména je problematický jejich nedostatek institucionální a personální

nezávislosti, Jakkoliv jejich zakládající dokumenty předpokládají zamezení konfliktu zájmů, tento systém není dostatečně efektivní. Odpovědnostní mechanismy by měly stát zcela stranou daných mezinárodních organizací. Objevovaly se též návrhy na zřízení zcela nezávislého soudu pro mezinárodní organizace; ty se však za současných podmínek zdají spíše přemrštěné.

V druhé řadě se odpovědnostní mechanismy budou muset vypořádat s postavením žadatele v řízení. Ten slouží spíše jako nositel možnosti zahájit řízení, než jako legitimní stěžovatel. To se projevuje v nedodržování kontradiktornosti, žadatelé nemají nárok na vyjádření se k relevantním skutečnostem ani konečnému výsledku věci. Nadto nemají nárok na doručování souvisejících korespondencí týkajících se řízení, jež probíhají mezi řídícím orgánem a odpovědnostním mechanismem. Zaměření se na řešení této problematiky by taktéž napomohlo legitimitě daných odpovědnostních mechanismů.

Konečně je nezbytné řešit obecnější otázku široké míry oprávnění řídících orgánů mezinárodní organizace v revizním procesu. V tomto smyslu se role odpovědnostních mechanismů redukuje na pouhé informátory, které s řídícími orgány v průběhu celého procesu mimořádně úzce spolupracují. To slouží zejména odstraňování systémových problémů. Nicméně zejména ve světle zmíněných případů, kdy došlo ke skutečně závažným zásahům do zájmů chráněných odpovědnostními mechanismy a kdy řídící orgán přesto odmítl provést plné šetření, se význam i legitimita odpovědnostních mechanismů stávají neudržitelnými.

Abstract

The Master's thesis dwells upon the accountability of International Organizations operating within the field of International Development Law. The interpretation of immunities thereof is extensive and there is no independent court with appropriate jurisdiction. Therefore there are solely very few means of holding them accountable for their acts, especially those which are not contrary to International Law outside of the realm of political pressure of the Member States. For this reason, the International Organizations were forced to adopt their own accountability mechanisms. These serve to help to eradicate the systemic shortcomings of the activities, mitigate risks and potential public outrage as well as to give recourse to those, who have been adversely affected by the International Organization's operation. These mechanisms, that include the revision panels, the so-called international accountability mechanisms, altogether form the accountability architecture. The core question of this paper is whether the current accountability architecture with respect to these International Organizations is satisfactory.

To these ends it firstly delineates the so far unclear notion of International Development Law, its sources, subjects, and object. Furthermore it dwells on the general considerations of accountability and responsibility with respect to International Organizations. Third chapter dwells on the main paradigmatic settings of the International Organizations within the International Development System and how it practically transpires into the accountability architecture and the operational policies and safeguards. Fourth chapter describes the operation of the international accountability mechanisms. Conclusion then gives certain suggestions and recommendations for the improvement of the status quo.

Key words

Accountability, responsibility - International Organizations - international accountability mechanisms – World Bank – United Nations

Abstrakt

Diplomová práce se zabývá odpovědností ve smyslu anglického *accountability* mezinárodních organizací v oblasti mezinárodního rozvojového práva. Imunity, jež jsou těmto organizacím přiznávány za účelem nerušeného výkonu jejich funkcí a naplňování cílů, jsou interpretací rozšiřovány až do absolutní podoby a není soudu, jenž by vykonával příslušnou jurisdikci. Existuje proto jen velmi málo prostředků mimo politickou rovinu tlaku členských států, jak zajistit odpovědnost mezinárodních organizací, zejména pak ve vztahu k činům nezakázaným mezinárodním právem. Z tohoto důvodu mezinárodní organizace jsou nuceny vytvářet své vlastní prostředky k zajištění své odpovědnosti. Ty slouží k tomu, aby se řešily systémové problémy v rámci dané organizace, ke snižování rizik a uklidnění veřejného mínění, jakož i jako odvolací mechanismy pro ty, kteří byli negativně ovlivněni činností těchto mezinárodních organizací. Tyto mechanismy, které mj. zahrnují i revizní panely, tzv. mezinárodní odpovědnostní mechanismy, dohromady tvoří odpovědnostní systém. Klíčovou otázkou této diplomové práce je, zdali je současné nastavení těchto systémů dostačující.

S tímto cílem práce nejprve vymezuje dosud nevyjasněný pojem mezinárodního rozvojového práva, jeho prameny práva, subjekty a objekt. Dále popisuje základy pojetí odpovědnosti mezinárodních organizací, a sice ve formě širší odpovědnosti za řádný výkon činnosti (*angl. accountability*), jakož i za mezinárodně protiprávní činy (*angl. responsibility*). Třetí kapitola popisuje status mezinárodních organizací v rámci mezinárodního rozvojového práva a základní ideologické zakotvení, jakož i jeho praktické projevy v nastavení odpovědnostního systému a interních pravidel, jimiž se řídí. Čtvrtá kapitola popisuje fungování mezinárodních odpovědnostních mechanismů. Závěrem je potom navržena řada možností, jakým směrem by se další diskuze o nastavení odpovědnostních systémů měla ubírat.

Klíčová slova

Odpovědnost - odpovědnost za mezinárodně protiprávní činy - mezinárodní odpovědnostní mechanismy – Světová banka – Organizace spojených národů