



Università
Ca' Foscari
Venezia

Master's Degree programme – Second
Cycle (*D.M. 270/2004*)

in Relazioni Internazionali Comparate –
International Relations

Final Thesis

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**Transparency and Accountability in
Development Cooperation**

Ca' Foscari
Dorsoduro 3246
30123 Venezia

A Focus on the World Bank and the European Union

Supervisor

Ch. Prof. Giovanni Bertin

Co-supervisor

Ch. Prof. Sara De Vido

Graduand

Monica Carlesso

Matriculation Number 829661

Academic Year

2014 / 2015

LIST OF CONTENTS

ABSTRACT	V
ABBREVIATIONS.....	XIV
INTRODUCTION	17
CHAPTER I: DEFINING DEVELOPMENT COOPERATION, TRANSPARENCY AND ACCOUNTABILITY	21
1. Development cooperation.....	22
a. Some preliminary definitions: different actors with different needs	22
b. A context constantly evolving	29
c. The challenges of a global governance regime	35
2. Transparency and Accountability	37
d. It is all a matter of power relations	38
e. Transparency and accountability in global politics and development cooperation: a way toward greater legitimacy?	47
CHAPTER II: A FOCUS ON THE WORLD BANK AND THE EUROPEAN UNION	53
3. Transparency and accountability of International Organizations	54
f. Some preliminary clarifications	54
g. Centralized mechanisms of general and individual oversight.....	57
h. Concerning the World Bank and the European Union	59
4. The World Bank Group	61
i. From financial institution to development agency	61
j. Coping with transparency and accountability claims.....	65
k. The World Bank’s Inspection Panel.....	68
5. The European Union.....	73
l. The road toward consensus and international compliance	73
m. Transparency of European Development Cooperation.....	77
n. The European Ombudsman: a potential to develop	79
CHAPTER III: critical and theoretical considerations	85
6. A comparison between the World Bank’s and the European Union’s solutions	86
o. Different features and common principles	86
7. Toward a convergence of principles in the development and global governance context?	94
p. The crisis of legal dualism and the affirmation of ultra-state administrative law.....	94

q. Toward a global administrative law?.....	95
CONCLUSION.....	97
BIBLIOGRAPHY	99
SOURCES.....	100
LIST OF FIGURES	109

ABSTRACT

Sin dall'istituzione della Banca Mondiale, subito dopo la conclusione della Seconda Guerra Mondiale, la cooperazione allo sviluppo ha subito una forte evoluzione. I maggiori cambiamenti hanno investito, innanzitutto, l'organizzazione interna delle agenzie impegnate nella programmazione e nel finanziamento di aiuti allo sviluppo, bilaterali e multilaterali. Successivamente, si è assistito anche ad un'evoluzione nelle relazioni tra paesi donatori e paesi riceventi e in generale, tra i vari attori coinvolti nella devoluzione di questo tipo di aiuto. In sintesi, l'organizzazione e l'amministrazione della cooperazione allo sviluppo ha subito una significativa trasformazione, soprattutto a livello sovra-nazionale.

In cinquant'anni, l'intero sistema internazionale di aiuti è diventato molto più complesso. Il numero di attori coinvolti nella programmazione e nel finanziamento degli aiuti allo sviluppo è cresciuto vertiginosamente. Inoltre, i presupposti e le motivazioni iniziali sui quali si è basata fin dall'inizio la cooperazione allo sviluppo hanno subito un profondo cambiamento. Da un approccio e una comprensione più generici e semplicistici riguardo alle reali condizioni e necessità dei paesi beneficiari e degli obiettivi da attuare per poter raggiungere un adeguato progresso economico, si è successivamente passati ad una comprensione più approfondita e completa delle reali dinamiche in atto in questi paesi e di conseguenza, delle molteplici variabili da tenere in considerazione durante la strutturazione degli aiuti allo sviluppo.

Da un lato, questa complessità di attori e obiettivi può rappresentare un ostacolo nei confronti di qualsiasi tentativo volto all'armonizzazione dell'attuale sistema e ad una maggiore cooperazione e coinvolgimento dei diversi soggetti che oramai ne fanno parte. Dall'altro lato, questa varietà di relazioni, attori, diversi punti di vista, reca in sé un enorme potenziale per l'attuazione di nuove riforme con lo scopo di rendere l'attuale sistema di cooperazione allo sviluppo più bilanciato e allo stesso tempo rappresentativo della pluralità di voci che lo costituiscono.

Nello specifico, questo elaborato si focalizza sui meccanismi attuati dalle varie organizzazioni internazionali attualmente impegnate nella programmazione e devoluzione degli aiuti, al fine di acquisire una maggiore credibilità e legittimità nei confronti dei loro membri, dei paesi beneficiari, della società civile e soprattutto, degli individui che possono essere danneggiati dall'attuazione di questi progetti.

Infatti, l'organizzazione dell'attuale sistema internazionale di cooperazione pone una serie di problemi strutturali per una giusta e corretta conduzione delle relazioni tra i vari attori coinvolti.

L'individuazione di queste problematiche risulta più semplice se si tengono in considerazione le profonde trasformazioni che hanno plasmato l'organizzazione del sistema internazionale e le implicazioni ad esse connesse, soprattutto riguardo ad una redistribuzione e decentralizzazione del potere, precedentemente detenuto in maniera esclusiva dagli Stati.

Per comprendere meglio le conseguenze di questo cruciale cambiamento è necessario fissare almeno un paio di punti di riferimento fondamentali. Innanzitutto, la crescente diffusione di regimi democratici in diversi stati del mondo, in seguito soprattutto alla fine del confronto tra Stati Uniti e Unione Sovietica, ha contribuito a plasmare l'immaginario collettivo, istituendo una visione comune dei principi alla base di una legittima amministrazione, sia a livello nazionale che internazionale. Un altro aspetto fondamentale concerne la crescente interconnessione tra i diversi attori economici e lo sviluppo di una fitta rete di comunicazione a livello mondiale, fenomeno meglio noto con il termine di globalizzazione, che ha contribuito, negli anni, ad una ridefinizione del ruolo internazionale dello stato e alla nascita di nuove forme di governo trans-nazionale in grado di rispondere meglio alle nuove sfide poste a livello globale da una crescente interdipendenza tra i vari soggetti e in vari ambiti, compreso quello della cooperazione allo sviluppo.

La tematica affrontata si inserisce proprio in questo nuovo e variabile contesto di costante innovazione strategica portata avanti da vari attori internazionali per far fronte all'attuale ridefinizione dei rispettivi ruoli e garantire allo stesso tempo la democraticità dei processi decisionali a cui fanno capo e che, a loro volta, coinvolgono un numero sempre più crescente di soggetti.

Dato che il presente elaborato si focalizza sul caso della cooperazione allo sviluppo, vengono prese in considerazione sia l'evoluzione del ruolo internazionale delle organizzazioni intergovernative impegnate nella programmazione e devoluzione di aiuti allo sviluppo, sia le relative conseguenze che tale cambiamento ha avuto sullo status di queste organizzazioni e sulle loro relazioni con le varie parti coinvolte nel processo. In particolare, vengono analizzati i casi dei due maggiori contribuenti internazionali: Banca Mondiale ed Unione Europea.

Entrambe queste istituzioni rientrano nella definizione di 'donatori internazionali' e fin dalla fine del secondo conflitto mondiale in poi, sono sempre state impegnate nella programmazione e attuazione di specifici progetti di cooperazione allo sviluppo in diverse parti del mondo, anche se con modalità e finalità leggermente diverse, per lo meno all'inizio del loro mandato. Hanno, inoltre, nel corso degli anni messo in atto dei particolari meccanismi al fine di rendere la loro azione più trasparente e di dimostrarsi più responsabili non solo nei confronti dei loro Stati membri ma anche di attori più 'informali' (il cui ruolo non è ancora stato ufficialmente istituzionalizzato a livello internazionale), che spesso risultano essere direttamente coinvolti dagli effetti delle decisioni e delle azioni intraprese da queste due organizzazioni.

Attraverso un successivo confronto tra i meccanismi presi in considerazione e rispettivamente adottati dalla Banca Mondiale e dall'Unione Europea, vengono messe in risalto sia le caratteristiche comuni che le differenze delle specifiche misure adottate da ogni organizzazione e del contesto a cui queste fanno riferimento. Il proposito è quello di mettere in luce i principi e le necessità comuni che stanno alla base dell'istituzione di questo tipo di meccanismi, oltrepassando i limiti dell'ambito della cooperazione allo sviluppo e inserendo la problematica nel più ampio contesto di global governance.

La trattazione dell'argomento si snoda lungo tre fasi successive, corrispondenti ai tre capitoli dell'elaborato.

Durante la prima fase, vengono ulteriormente chiariti ed indagati i tre concetti fondamentali alla base di questo lavoro, ossia: cooperazione allo sviluppo, trasparenza e accountability. Iniziano, quindi, ad essere delineati i confini pratici e teorici del contesto di riferimento in cui verrà successivamente inserita l'analisi delle due organizzazioni internazionali prese in considerazione.

Nella seconda fase viene innanzitutto indagata l'evoluzione del rispettivo approccio alla cooperazione allo sviluppo di entrambe le organizzazioni. In questo modo, le specificità di ciascuna istituzione sono messe in relazione sia al mandato che al ruolo che hanno rivestito nell'ambito della cooperazione, sia al modo in cui esse si sono rapportate con i paesi beneficiari, durante i processi decisionali di definizione ed attuazione dei progetti di cooperazione e soprattutto con gli individui direttamente sottoposti agli effetti di tali decisioni.

Successivamente, vengono presentati i meccanismi di trasparenza e accountability che entrambe le organizzazioni hanno istituito e sviluppato nel corso del tempo, proprio per far fronte alla crescente asimmetria di informazione e al divario di potere esistente tra queste organizzazioni e i soggetti direttamente coinvolti nelle implicazioni delle loro azioni.

Si tratta di una prima forma di riconoscimento di determinati diritti in capo a degli attori specifici, che fino a poco tempo prima erano tutelati e garantiti a livello internazionale dai rispettivi Stati. Infatti, il verificarsi delle trasformazioni a livello mondiale, a cui si è accennato in precedenza, ha causato una riduzione ed una dispersione di queste garanzie, in corrispondenza dell'acquisizione di maggior potere da parte di altri soggetti internazionali, quali ad esempio le organizzazioni qui prese in considerazione. Queste ultime, tuttavia, sono legalmente tenute a rispondere delle proprie azioni solo rispetto ai loro Stati membri e non nei confronti di individui privati coinvolti dalle conseguenze delle loro azioni. Questo aspetto implica una totale mancanza di responsabilità nei confronti di questi ultimi da parte delle organizzazioni considerate, a cui le stesse hanno cercato di ovviare adottando particolari meccanismi, in un tentativo di ristabilire la loro legittimità e credibilità.

Per quanto riguarda la trasparenza, le misure adottate si riferiscono in particolar modo alla formulazione di specifiche norme di divulgazione dell'informazione, che regolano l'accesso a documenti di una certa rilevanza, quali: regolamenti specifici riguardanti il ruolo assolto dai vari membri e funzionari di una data organizzazione, resoconti dei processi decisionali, valutazioni delle operazioni portate avanti dall'organizzazione e così via.

Per quanto riguarda l'accountability, invece, viene preso in considerazione il ruolo svolto dagli organi indipendenti di supervisione non giudiziaria istituiti da queste organizzazioni, quali: l'Inspection Panel nel caso della Banca Mondiale e l'Ombudsman nel caso dell'Unione Europea.

Nella terza fase dell'elaborato, questi meccanismi vengono confrontati e messi in relazione non solo rispetto all'ambito cooperazione allo sviluppo, ma anche al contesto attuale di global governance. Infatti, soprattutto nel complesso caso dell'Unione Europea, tali meccanismi non sono stati istituiti direttamente in relazione al ruolo svolto da questa organizzazione nell'ambito della cooperazione allo sviluppo. Ne deriva, quindi, che la decisione di adottare simili provvedimenti a quelli messi in atto dalla Banca Mondiale, si rifà ad un'esigenza più generale di garantire dei mezzi ai privati cittadini per poter partecipare attivamente ai processi messi in atto da queste istituzioni e allo stesso tempo, per garantire un controllo democratico sulle loro azioni.

Si tratta di soluzioni comuni a problemi altrettanto condivisi a livello globale, di cui la cooperazione allo sviluppo costituisce solo un ambito ristretto di applicazione.

Sulla base di questo svolgimento in tre fasi, il primo capitolo inizia a trattare l'argomento definendo in primis, a cosa ci si riferisce quando si parla di cooperazione allo sviluppo e che interpretazione si possa dare ai concetti di trasparenza ed accountability.

Partendo dalla definizione di cooperazione allo sviluppo, questa viene essenzialmente suddivisa in tre parti fondamentali: individuazione e descrizione dell'oggetto della cooperazione e delle relazioni tra i rispettivi attori coinvolti; breve excursus storico della cooperazione allo sviluppo; considerazioni finali sull'attuale sistema di cooperazione in relazione al contesto di global governance.

Per quanto riguarda la descrizione dell'oggetto e degli attori fondamentali, viene inizialmente introdotta la definizione di ODA (Official Development Aid), corrispondente all'aiuto pubblico allo sviluppo. L'elaborato si focalizza infatti sulle organizzazioni che devolvono questo tipo di aiuto pubblico. Non vengono presi in considerazione altri tipi di finanziamento privato o non-governativo. Riguardo al concetto di aiuto pubblico, quindi, vengono definite le caratteristiche principali, l'utilità e le attuali limitazioni concettuali in relazione all'evoluzione del sistema di cooperazione allo sviluppo.

Per quanto riguarda i soggetti coinvolti, una prima distinzione viene fatta tra donatori e beneficiari dell'aiuto, in che relazione stanno tra loro e attraverso quali modalità si può articolare un rapporto di cooperazione allo sviluppo. Esistono essenzialmente due modi: cooperazione bilaterale o multilaterale. In questo caso, maggior attenzione viene posta sulle modalità organizzative dell'aiuto multilaterale. Vengono dapprima presentati punti di forza e i limiti di entrambi, successivamente viene presa unicamente in considerazione la modalità di cooperazione multilaterale, perché più interessante ai fini dell'investigazione condotta in questo lavoro; questa si basa infatti sull'istituzione di organizzazioni governative con lo scopo preciso di amministrare gli aiuti nei paesi destinatari. Tale modalità presuppone l'eventualità da parte di queste organizzazioni, per i motivi precedentemente esposti, di entrare in una situazione di conflittualità con i diretti beneficiari dei questi aiuti e di innescare, quindi, una serie di dinamiche che hanno iniziato ad essere istituzionalizzate solamente negli ultimi anni.

Nella seconda parte della sezione, viene presentato un breve excursus storico relativo all'evoluzione del concetto stesso di sviluppo, di come questo sia stato inteso e messo in atto in riferimento a determinati sviluppi storici, sociali e politici.

La storia della cooperazione allo sviluppo può essere essenzialmente suddivisa in due macro fasi. Una prima fase in cui l'aiuto allo sviluppo viene interpretato soprattutto e quasi unicamente come la necessità di avviare un processo di progresso economico all'interno dei paesi beneficiari, ai quali è affidato l'esclusivo compito di mettere in atto tutte le politiche necessarie per raggiungere tale obiettivo. La sovranità di questi Stati viene dunque inizialmente rispettata. Nella seconda fase, invece, in seguito all'integrazione economica avviata dal processo di globalizzazione e all'affermarsi di un approccio allo sviluppo maggiormente improntato al neoliberismo, l'azione dei principali finanziatori internazionali, Banca Mondiale in primis, subisce una brusca svolta nelle modalità di devoluzione degli aiuti, la cui disponibilità viene ora condizionata a delle specifiche richieste. La sovranità degli Stati beneficiari inizia quindi ad essere violata e la loro capacità di attuare le condizioni richieste viene messa in discussione.

Nell'ultima parte della sezione, l'evoluzione delle pratiche legate alla cooperazione allo sviluppo viene messa in relazione con i cambiamenti strutturali verificatisi a livello internazionale, che vedono una graduale diminuzione della capacità di controllo da parte dello stato sulle attuali dinamiche globali. Allo stesso tempo, però, si stanno facendo largo nuovi attori internazionali, quali le organizzazioni prese in considerazione, che si fanno in parte carico del ruolo amministrativo precedentemente svolto dallo Stato, nel regolamentare le relazioni a livello globale tra le varie parti coinvolte e operanti all'interno della stessa struttura di governance istituita da queste organizzazioni.

Nella seconda sezione del capitolo vengono definiti i concetti di trasparenza e accountability, prima da un punto di vista teorico generale e poi in riferimento al contesto della cooperazione allo sviluppo.

Entrambi i concetti hanno subito nel tempo un'evoluzione che li ha portati ad essere maggiormente utilizzati all'interno del discorso politico attuale e nello specifico in relazione all'idea di affidabilità, di una giusta ed equa amministrazione. A loro volta, implicano la possibilità di rendere le organizzazioni internazionali più reattive nei confronti degli attori con cui queste si rapportano quotidianamente.

Il concetto di trasparenza è generalmente considerato un aspetto fondamentale della 'good governance' e una condizione essenziale per la realizzazione dell'accountability. Solitamente, il possesso di informazioni rilevanti può essere interpretato come una forma di potere, poiché implica la capacità di esercitare un controllo su queste informazioni e la possibilità di usarle per i propri scopi. Diventa necessario, quindi, sviluppare delle misure atte a regolare il possesso di queste informazioni, rendendole accessibili a tutti i soggetti coinvolti in un determinato ambito e non solo a coloro che detengono il potere decisionale. Queste misure, infatti, permettono di risolvere in parte alcune problematiche derivanti da un'asimmetria di potere tra decisori e soggetti su cui si riversano gli effetti di queste decisioni.

Il concetto di trasparenza è strettamente correlato al concetto di accountability. Si può infatti affermare che l'una sia funzionale all'altra. Questo aspetto è maggiormente messo in luce nel terzo capitolo, quando i meccanismi di trasparenza e accountability delle organizzazioni considerate vengono messi a confronto.

La nozione di accountability, invece, vanta un'origine maggiormente legata all'ambito finanziario, nel quale è tuttora ampiamente utilizzata. Tuttavia, di recente ha iniziato ad essere anch'essa messa maggiormente in relazione all'ambito politico e in particolare al contesto statale, ad indicare i diversi meccanismi interni volti a prevenire ed eventualmente a rimediare a qualsiasi tipo di abuso perpetrato dai detentori del potere politico. Nell'ambito dello Stato, questo tipo di controllo viene di norma esercitato attraverso il potere elettorale dei cittadini e ad una tripartizione dei poteri di governo. In ambito internazionale questo non è possibile, perché non esistono né una costituzione internazionale in grado di attribuire poteri specifici a determinati attori, né un forum globale interamente coerente ed omogeneo. Si è quindi cercato di ovviare in altro modo.

Attualmente numerosi e diversi meccanismi di trasparenza ed accountability sono fioriti a livello internazionale, atti a garantire sia un controllo verticale (principal-agent) che un controllo orizzontale (tra pari) sull'azione delle organizzazioni internazionali. In particolare, per quanto riguarda l'ambito della cooperazione allo sviluppo, esistono diverse modalità di supervisione, ma spesso la possibilità di metterle in atto ricade quasi esclusivamente sugli attori con maggior potere. Ne consegue che, ad esempio, gli individui danneggiati dall'azione di una organizzazione non possano esercitare un adeguato potere di controllo sull'istituzione.

Successivamente, nel secondo capitolo viene inizialmente introdotta la problematica relativa all'immunità delle organizzazioni internazionali. Questo aspetto, infatti, ostacola ulteriormente la possibilità di esercitare un controllo formale su questi attori, soprattutto da parte degli individui che, dopo aver subito un danno direttamente riconducibile ad un'azione od omissione di queste organizzazioni rispetto ai loro regolamenti procedurali, intendano in qualche modo tutelarsi.

Successivamente, vengono descritti i meccanismi che queste organizzazioni possono mettere in atto per ovviare a questo ostacolo, dimostrandosi più responsabili nei confronti dei diversi soggetti a cui devono garantire la legittimità delle loro azioni.

Questi meccanismi di supervisione si dividono essenzialmente in due tipologie: misure di 'prospective accountability' e 'retrospective accountability'. La prima categoria si riferisce a tutti quei processi non giudiziari tesi a favorire maggior partecipazione e trasparenza all'interno dei processi decisionali. La seconda tipologia, invece, riguarda tutte quelle misure messe in atto dalle organizzazioni internazionali per garantire la responsabilità della loro condotta ex post facto. In questa categoria rientrano le procedure non giudiziarie per la presentazione di un reclamo.

Nella seconda parte del capitolo, vengono infine presi in considerazione i casi della Banca Mondiale e dell'Unione Europea.

Lo studio di queste due organizzazioni costituisce un arricchente tentativo di analisi, derivante dai diversi contesti storici e politici in cui queste si sono formate e dalle loro diverse priorità. La Banca Mondiale, infatti, nata come istituzione finanziaria ha successivamente subito una trasformazione più improntata alle tematiche dello sviluppo. L'Unione Europea, invece rappresenta un esempio innovativo di governance sovranazionale.

L'analisi di entrambe le organizzazioni si sviluppa in tre parti: contestualizzazione storica ed attuale ruolo assunto nell'ambito della cooperazione allo sviluppo, successivamente ad un breve excursus storico per rintracciare le cause che hanno portato a questo esito; contestualizzazione dei processi che hanno indotto entrambe le organizzazioni ad istituire nel corso degli anni i meccanismi di trasparenza ed accountability presi in considerazione; analisi di tali meccanismi.

Nel caso della Banca Mondiale, viene fatto innanzitutto riferimento al ruolo maggiormente tecnico assolto da questa organizzazione nella programmazione e la successiva devoluzione di aiuti allo sviluppo. Successivamente viene evidenziato come, nel corso degli anni, questa istituzione abbia finito con l'ampliare sempre di più il suo mandato iniziale, nel quale viene fatto preciso riferimento al divieto di devolvere gli aiuti sotto particolari pressioni politiche, esulando quindi dall'aspetto meramente economico della procedura e soprattutto dal divieto di interferire nelle questioni interne dei vari Stati a cui gli aiuti vengono devoluti.

Soprattutto a partire dagli anni '80 in poi, infatti, la Banca inizia a formulare una serie di condizioni e linee guida, cui gli Stati beneficiari devono attenersi per poter ricevere gli aiuti concessi. Ne risulta un'eccessiva ingerenza della Banca all'interno dell'ambito decisionale degli Stati, che si vedono costretti a 'barattare' il loro esclusivo controllo sulle politiche attuate a livello nazionale in cambio di questi aiuti.

Questa situazione di disparità inizia lentamente a riequilibrarsi a partire dagli anni '90, quando in seguito a forti critiche mosse da varie ONG e da alcuni Stati membri, riguardo alle implicazioni ambientali e umanitarie di alcuni progetti finanziati dalla Banca, questa decide finalmente di adottare delle misure per rendere la sua azione maggiormente legittima e controllabile anche da parti di altri attori, all'infuori degli Stati membri.

Già a partire dalla seconda metà degli anni '80, la Banca inizia a formulare le prime norme regolanti l'accesso alle informazioni che fino ad allora erano rimaste segrete. Inizia quindi un percorso volto ad incrementare sempre più la trasparenza dei suoi organismi e dei processi decisionali e organizzativi in cui questi sono coinvolti, al fine di garantire un maggior controllo pubblico delle sue attività. In questo modo la Banca mira ad accrescere la sua credibilità e al tempo stesso crea nuove possibilità di supervisione delle sue azioni.

Una maggior trasparenza, infatti, è necessaria al fine di chiarire i ruoli rivestiti dai vari funzionari e dagli organi che compongono questa istituzione, quali responsabilità ne conseguano e a quali procedure questi debbano attenersi nello svolgimento delle loro funzioni. Ne deriva una maggior chiarezza e la possibilità di individuare dei casi specifici in cui, in seguito ad un'azione o omissione della Banca, possa essere riconosciuto un eventuale danno a scapito di determinati soggetti individuali. Questo aspetto implica la possibilità per i suddetti individui di presentare un reclamo attraverso l'altro meccanismo di supervisione istituito dalla Banca nel 1993, ossia l'Inspection Panel.

L'organizzazione interna e il funzionamento di questo particolare organismo vengono affrontati nell'ultima parte della sezione dedicata alla Banca Mondiale. In linea di massima, questo organo interno permette agli individui che abbiano subito un danno o rischino seriamente di subirlo, a causa di una cattiva condotta della Banca, di presentare un reclamo a cui può successivamente far seguito un'investigazione per chiarire un'eventuale mancanza della Banca. Questo meccanismo è sottoposto all'approvazione da parte del Board of Executive Directors e quindi, viene sempre e comunque esercitato un controllo verticale sull'attività della Banca, con le implicazioni più o meno positive che ne possano derivare. Questo organismo permette un controllo riguardo alla conformità delle azioni della Banca rispetto ai suoi regolamenti e standard interni ed in tal modo, permette una verifica ed un aggiornamento costante delle procedure, quando queste risultino controproducenti. L'efficienza e l'efficacia della Banca derivano anche da questo tipo di supervisione.

Prendendo in considerazione il caso dell'Unione Europea, invece, si intuisce subito la complessa natura di questa organizzazione e la sua conseguente difficile contestualizzazione nell'ambito della cooperazione.

Innanzitutto, la cooperazione allo sviluppo costituisce un settore specifico, inserito all'interno di un più ampio spettro di politiche portate avanti dall'Unione nell'ambito della sua Azione Esterna. Ne consegue che la strategia di cooperazione europea non possiede uno status privilegiato all'interno delle varie decisioni amministrative prese dall'Unione, ma anzi deve essere attuata coerentemente con gli altri settori relativi all'azione internazionale di questa organizzazione.

Un altro aspetto fondamentale è rappresentato dalla natura maggiormente politica dei processi interni a questa istituzione, che va successivamente ad influire sulle modalità con cui vengono attuate le varie decisioni relative ai settori di competenza dell'Unione.

In questo particolare contesto si inserisce la strategia di cooperazione allo sviluppo europea, che fin dall'inizio è stata caratterizzata da uno speciale rapporto con uno specifico gruppo di paesi, facenti essenzialmente parte dei precedenti imperi coloniali francese ed inglese. Proprio nel contesto di questa specifica relazione, l'Unione arriva a formulare uno dei più alti esempi di cooperazione allo sviluppo mai esistiti, per gli ideali di uguaglianza e democrazia sui quali si fonda: la Convenzione di Lomé. Purtroppo, l'idillio europeo non dura a lungo e già a partire dagli anni '80, l'Unione inizia ad adottare una strategia maggiormente in linea con quelli che erano gli standard contemporanei di cooperazione dettati dalla Banca Mondiale. A partire da questo momento in avanti, la cooperazione allo sviluppo europea inizierà sempre più a rispecchiare i trend internazionali e ad adeguarvisi, a perdendo l'unicità che l'aveva contraddistinta ai tempi della Convenzione di Lomé.

A partire dall'entrata in vigore del Trattato di Lisbona, l'organizzazione interna delle agenzie europee specializzate nella formulazione e successiva attuazione delle strategie di sviluppo viene completamente rivista. Questo rinnovamento mira a rendere più efficiente e coerente l'azione dell'Unione Europea nell'ambito della cooperazione, anche se non vengono adottate specifiche misure finalizzate a garantire una maggior responsabilità dell'organizzazione nei confronti dei destinatari dei progetti, come era invece avvenuto nel contesto della Banca Mondiale.

Questo aspetto deriva essenzialmente dalla particolarità dell'Unione quale organizzazione sovra-statale a carattere regionale e per lo più composta da soli Stati donatori. Infatti, nessun soggetto extra-europeo, paesi beneficiari men che meno, ha il diritto di essere rappresentato all'interno di questa istituzione. Ne consegue che le varie misure adottate dall'Unione per favorire una sua maggiore trasparenza e accountability sono rivolte in primis e quasi esclusivamente ai suoi membri, sia Stati che cittadini.

Questo può rappresentare un ostacolo all'esercizio del diritto di partecipazione e supervisione da parte di soggetti esterni all'Unione, come nel caso di individui che abbiano ricevuto un danno in seguito alla cattiva attuazione di un progetto di cooperazione europea.

Tuttavia, esiste un organismo, l'Ombudsman, istituito dal Parlamento europeo, che può accettare reclami anche se non direttamente presentati dalla parte lesa o in alternativa, su sua propria iniziativa. Questo procedimento, rappresenta uno spiraglio di speranza per tutti quei soggetti che vengano direttamente danneggiati dall'Unione nell'ambito della cooperazione, anche se sostanzialmente affidato all'azione indiretta di ONG che dovrebbero farsi carico delle varie richieste individuali.

Dal punto di vista della trasparenza la situazione non cambia molto, dato che, anche in questo caso, i provvedimenti presi a riguardo consentono solamente ai soggetti facenti parte dell'Unione di esercitare i diritti previsti nell'ambito delle norme di accesso all'informazione, lasciando a discrezione delle istituzioni, eventualmente chiamate in causa, la possibilità o meno di far pervenire a soggetti extra-europei le informazioni e documentazioni richieste.

Tuttavia, al di là di tutte le restrizioni previste in ambito europeo sull'attivazione di questi meccanismi di supervisione non giudiziari da parte di soggetti extra-europei, queste misure costituiscono comunque un'importante passo in avanti nella garanzia di maggiori diritti agli individui ricadenti nell'ambito d'azione di un'organizzazione internazionale, nel caso specifico dell'Unione.

Nel terzo capitolo, attraverso un confronto tra i rispettivi meccanismi di supervisione non giudiziaria presi in considerazione in questo elaborato, ne vengono dapprima messi in luce gli aspetti di innovazione e i rispettivi limiti. Successivamente, attraverso una contestualizzazione di queste varie misure rispetto all'ambito organizzativo in cui sono state istituite e alle motivazioni che hanno portato alla loro successiva affermazione, ne consegue che in entrambi i casi analizzati alla base delle decisioni portate avanti da queste organizzazioni ci sia soprattutto la volontà di dimostrarsi più reattive alle richieste dei loro diretti beneficiari.

Il fatto che queste misure siano state prese soprattutto a partire dalla fine degli anni '80, in corrispondenza dei cambiamenti avvenuti a livello internazionale, di cui si è accennato sopra, e che non si limitino solamente all'ambito della cooperazione allo sviluppo, indica un'ulteriore convergenza a livello sovra-nazionale di diverse istituzioni verso l'adozione di meccanismi volti a garantire la legittimità delle loro azioni nei confronti dei soggetti coinvolti e, allo stesso tempo, di incrementare la possibilità da parte degli individui di poter esercitare un controllo di tipo democratico su queste stesse organizzazioni.

ABBREVIATIONS

AAA	Accra Agenda for Action
ACP	African Caribbean and Pacific (countries)
BNA	Basic Need Approach
DAC	Development Assistance Committee
DCI	Development Cooperation Instrument
DGDEVCO	Directorate-General for International Cooperation and Development
EC	European Commission
EDC	European Development Cooperation
EDF	European Development Fund
EEAS	European External Action Service
EEC	European Economic Community
ENPI	European Neighbourhood and Partnership Instrument
EO	European Ombudsman
EU	European Union
GAL	Global Administrative Law
GATT	General Agreement on Tariffs and Trade
GTI	Global Transparency Initiative
HLFs	High Level Forums
IAM	Independent Accountability Mechanism
IATI	International Aid Transparency Initiative
IBRD	International Bank for Reconstruction and Development
IDA	International Development Assistance
ILA	International Law Association
IMF	International Monetary Found
IOs	International Organizations
IP	Inspection Panel
MDBs	Multilateral Development Banks
MDGs	Millennium Development Goals
NGO	Non-Governmental Organization

NIEO	New International Economic Order
ODA	Official Development Assistance
OECD	Organization for Economic Development and Cooperation
PRSP	Poverty Reduction Strategy Paper
RRPs	Recommended Rules and Practices
SAL	Structural Adjustment Loans
SAP	Structural Adjustment Programme
SDGs	Sustainable Development Goals
TEU	Treaty on European Union
TFUE	Treaty on the Functioning of the European Union
UN	United Nations
USSR	Union of Soviet Socialist Republics
WB	World Bank
WTO	World Trade Organization

INTRODUCTION

Since the inception of the World Bank, immediately after the World War II, development cooperation has undergone major changes, concerning the internal management of multilateral and bilateral agencies, donor-recipient relationships and the structure of aid governance itself.

In 50 years, the international aid system has grown more complex. Several new actors have joined the arena, thus increasing the number of stakeholders involved in aid delivery. The original scope and meaning have also evolved. From a more general and simplistic approach and understanding of recipients countries' dynamics to a more in-depth one, with a subsequent diversification of sectors of action. On the one hand, this complexity can represent an obstacle to any attempt of harmonization, cooperation and claims of legitimacy. On the other hand, it holds great potential for change and reform towards a more balanced and participatory aid system.

Development cooperation, almost synonymous with financial aid by now, is essentially provided bilaterally or multilaterally.

Bilateral aid has always been the most employed channel for aid delivery. Firstly, donors have vested interests in programs which can benefit their national companies, non-governmental organizations and government agencies, while increasing public support for aid. Secondly, divergent values and priorities among donors lead to different goals, which are easier to pursue on a bilateral way. Thirdly, multilateral agencies are seen as overloaded by bureaucratic and time-consuming procedures, especially concerning evaluation methodologies. They are considered less efficient, transparent and accountable than bilateral agencies.

However, multilateral agencies could ideally represent a really efficient means of providing aid. For instance, they reduce ex-ante and ex-post transaction costs and act as intermediary among the parties and their different preferences and priorities.

The most well-known success achieved by multilateral cooperation is the outstanding finalization of the Marshall Plan. Years of excitement and commitment followed, slowed down by further failures and critiques. Cooperation projects in developing countries turned out to be inefficient, mismanaged and thoughtless of recipient countries real needs and priorities.

The strong criticism against unequal and inefficient policies and actions adopted by multilateral agencies reveals the lack of legitimacy suffered by these institutions. Civil society movements and NGOs' advocacy action have gradually become an important input source for multilateral agencies, pushing for debate and reform inside these institutions. Unfortunately, they are not sufficient.

In 2015, two initiatives helped to focus greater attention on development cooperation affairs. On the one hand, the progress made in the last decade to achieve the Millennium Development Goals (MDGs) was finally assessed and a new global framework for the coming 15 years, known as Sustainable Development Goals (SDGs) was negotiated. On the other hand, the European Union declared 2015 the 'European Year for Development Cooperation'.

These twelve months represented the occasion to foster dialogue among formal and informal actors currently involved and interested in development cooperation, at the national, regional and international level. Moreover, these two initiatives renew the importance of strategic harmonization and above all of increased participation for a more fair and legitimate development cooperation action in the current global governance system. Indeed, they can be rightly considered as reliable barometers of the actual aid system's conditions. As a matter of fact, they reveal current attempts at refocusing development cooperation toward more effective and efficient interventions, which should be equally endorsed by all the actors involved and by affected individuals as well. Unfortunately, this is not always the case.

The recent evolution of global politics, under the influence of an accelerated globalization's action, caused a growth in interdependence between the domestic and the international spheres, once sufficiently independent arenas of political and legal action. Their boundaries have now become more blurred, thus leading to serious accountability gaps. As a matter of fact, decisions taken at global level have far-reaching and direct repercussions on individuals, who most of the time cannot rely on traditional accountability mechanisms to prevent international organizations from affecting their rights. This is quite a common trend even in the development-aid system today. Together with limits to participation, a lack of adequate transparency measures and of review methods are often identified as obstacles to greater institutions' legitimacy.

Nevertheless, international organizations have not remained passive to the persistent requests for greater accountability from the part of civil society and affected individuals. In particular, multilateral organizations such as the World Bank and the EU, seemed to adapt more quickly to the changing needs of the global aid system. Indeed, in both cases horizontal accountability mechanisms have been adopted, over the years, to reduce external accountability gaps, especially with recipient countries' governments and affected people. These instruments mainly consist of evaluations, quasi-judicial and non-judicial procedures. Their real impact and efficacy is still a matter of study. Nevertheless, it is recognized that they are likely to favour processes of consultation and consensus-building in a long-time perspective, if supported by adequate transparency measures.

This dissertation represents the occasion for a more accurate study of the innovations and resolutions brought about by these two emblematic institutions to solve the external accountability challenges they faced and are still confronting today. The results of the analysis will give a more comprehensive understanding of the causes behind these innovations.

The work is structured into three main chapters. First of all, in order to investigate how the development-aid system has evolved during the years and in what way transparency and accountability practices have been introduced and expanded in the development cooperation's discourse, the first chapter will offer a theoretical and historical review of the terms, in relation to their context of application and the different interpretations that have been advanced in the most salient phases of aid governance's formation and evolution.

Concerning development, this notion began to diffuse after the successes achieved by the Marshall Plan in Europe. At first, it was linked to a mere economic fact of capital injection. Then, it became clear that economic growth in developing countries needed also structural reforms to get off the ground. Hence, the scope and meaning of multilateral agencies began to expand from poverty reduction to good governance reforms, until sustainable development assumptions, along with an increase in power and influence of these same organizations.

Accountability, instead, derives from internal state mechanisms for preventing and redressing the abuse of political power. When the ideological foundation and justification of development cooperation faced a deep crisis of meaning at the end of the Cold War, the efficacy and efficiency of development assistance were called into question as well as the responsibility and the legitimacy of multilateral aid agencies. A growing criticism from the part of the civil society (NGOs) followed, exacerbated by the lack of transparency in international organizations' decision-making procedures and by the negative impact these same policies were having in recipient countries. There was a widespread need for reforms aiming at limiting any possible abuse of power of international organizations. Thus, the concept of accountability was transposed at the international level even if with some difficulties. Multilateral agencies were asked to be more accurate in their evaluations, to respect the standards set and to be more responsive to their stakeholders and to the public opinion.

The third notion considered, transparency, is strictly linked to accountability. The two concepts coexist somehow, one reinforcing the other and vice-versa. Indeed, transparency is functional to accountability, since without it the work of aid agencies could not be made available to public scrutiny. Therefore, transparency measures help filling the gaps between donors, recipient countries and civil society in decision-making processes, increasing in turn, multilateral agencies' reputation and carrying major benefits for the entire aid system.

The second chapter will focus on an analysis of the World Bank and the European Union mechanisms of non-judicial oversight. The study of the WB and the EU is an enriching attempt of examination, because of the institutions' different backgrounds, history and priorities. The WB was born as a financial institution, but it has recently started behaving like a political institution, expanding its field of action. The EU, instead, represents an innovative example of supranational governance.

First of all, some preliminary clarifications will be necessary to better understand the complex relation between transparency, accountability and the peculiarities of international organizations. Secondly, the circumstances of the inception and the subsequent institutionalization of the World Bank and European Union agencies are separately exposed. This historical excursus will help to understand what are the inherent characteristics and the differences of each international organization's approach to development cooperation and in which terms they conceive their relations with recipient countries. The chapter continues with an analysis of the main policies and organisational procedures essentially concerning transparency and accountability measures, which have been approved by each institution along the years.

Finally, the most innovative examples of centralized non-judicial oversight implemented by each organizations will be analyzed from a theoretical and organizational perspective, in order to highlight what kind of improvements have been accomplished until now, which limitations they may present and how their utility can possibly be extended.

The explanation of the concepts at the basis of this work and of their context of reference, through the precedent chapters, finally allows some critical and theoretical considerations. Hence, the third chapter opens with a comparison between the WB's and EU's oversight mechanisms exposed in the previous chapter. Their inception, their functioning and main features are analyzed in correlation to the different mandate, administrative regulation and role performed by their respective organizations. This comparison will help to expand the understanding of transparency and accountability principles both in relation to development cooperation and global governance. As a matter of fact, in the second part of the chapter, the changes recently occurred in the development cooperation context, concerning the establishment of non-judicial oversight mechanisms inside the IOs' taken into consideration, will be further interpreted through a more general trend of global administrative regulation. Indeed, it will be assumed that the principles and the concerns at the origin of the establishment of the oversight mechanism considered, are the same ones governing the administration and legalization of the current transnational global relations

CHAPTER I: DEFINING DEVELOPMENT COOPERATION, TRANSPARENCY AND ACCOUNTABILITY

Development cooperation has undergone a deep evolution in the years, characterized by an increased complexity of the aid landscape. The end of the Cold War caused a radical change in the political and economic motives of development assistance, leading to long-term repercussions. The principles at the base of the aid system have undergone major changes as well, pushing the most influential public actors, with multilateral donors on the frontline, to rethink their roles and priorities.

To better understand the consequences of this crucial shift, few but essential features have to be kept in mind. First of all, the ‘*political anchor*’¹ previously offered by Cold War arguments soon became no longer viable, entailing a refocus on aid effectiveness. Secondly, the number of governmental, as well as private and non-state actors involved has largely increased both from donors and recipients side. This rise goes along with an evolution and an expansion of development cooperation objectives. Thirdly, the action of globalization investing the aid system, transformed it from what could be defined a ‘sovereignty regime’ into a ‘global governance regime’.²

Transparency and accountability claims became more frequent in this new global governance system since 1990s, along with calls for a more legitimate and equitable conduction of development cooperation affairs. Yet these terms are usually employed in a broad sense, especially accountability, without a clear understanding of the relations they usually involve. Moreover, traditional domestic accountability mechanisms are no more viable in the present global context. This aspect has caused several problems to the effective implementation of accountability in development-aid system.

This first chapter, thus, aims at clarifying the current understanding of development cooperation and of transparency and accountability concepts. The explanation takes into consideration the theoretical evolution and the historical, political and social circumstances under which these three basic concepts have been interpreted and are conceived now.

1 E. Deutscher and P. Jacquet, *Addressing the Overcomplexity of International Aid Architecture*, Global Geopolitics & Political Economy/ IDN, 2010, available at: <http://globalgeopolitics.net/wordpress/2010/10/17/addressing-the-overcomplexity-of-international-aid-architecture/>

2 David Williams, ‘Ownership’, *Sovereignty and Global Governance*, Managing Aid Dependency Project, GEG Programme, 2006, p.4

1. Development cooperation

Development cooperation and in particular, multilateral development aid began acquiring more and more importance at the end of WWII. The instability and devastations caused by the war basically led the international economic system to collapse. Europe had to face a critical shortage of capital³. The establishment of the Bretton Woods system and especially, the consequent implementation of the Marshall Plan turned out to be a relevant success. A wave of widespread optimism boosted multilateral agencies' operations, this time towards a different target: developing countries. The majority of them had become independent around 1960. In a climate of trust and confidence, huge capital injections were instilled in those already ex-colonies. The official aim was to eliminate poverty and inequality by means of artificially triggered economic growth. During the Cold War confrontation, instead, foreign aid concessions were more strictly related to military and security purposes. Then, from the 1990s onward, the focus of development cooperation shifted decisively toward aid effectiveness.

The evolution of aid motives and of the different approaches adopted by the actors involved will be thoroughly discussed in the next paragraphs. For the moment, it is useful to lay out a general structure of the aid system.

a. Some preliminary definitions: different actors with different needs

ODA

Foreign aid refers to transfers of resources among independent governments and countries. In historical terms, it is a relatively recent phenomenon, as it began spreading mainly after WWII. It is also a rather puzzling fact, since it generally implies the lending of public concessional resources with the aim of promoting, among other things, the well-being of people in other countries⁴. During the years, the term development cooperation has become almost synonymous with foreign aid or, more narrowly, with Official Development Assistance (ODA). Actually, terms like 'foreign aid', 'foreign assistance', 'development aid', 'development assistance' and 'development cooperation' are often used interchangeably.

According to the Development Assistance Committee's definition, ODA consists of those flows to countries and territories on the DAC list of ODA Recipients and to multilateral development institutions which are:

'Provided by official agencies, including state and local governments, or by their executive agencies; and each transaction of which is:

a. administered with the promotion of the economic development and welfare of developing countries as its main objective;

*b. concessional in character and conveys a grant element of at least 25 per cent.'*⁵

³ Finn Tarp, *Aid and Development*. Published in: Swedish Economic Policy Review, Vol. 13: 9-61, 2006, p.20

⁴ C. Lancaster, *Foreign Aid, Diplomacy, Development, Domestic Politics*. University of Chicago Press, 2008, p.2

⁵ OECD, *Is it ODA?*, Factsheet, 2008, p.1

The OECD Development Assistance Committee has been engaged in improving and harmonizing the financial terms of aid since its establishment, in 1961⁶. It is precisely to reduce the scope for subjective interpretations and at the same time, to promote comparable reporting, that the concept of ODA was adopted some years later, in 1969.

It is evident, from the above-quoted definition that the promotion of economic and social development represents a decisive criterion for determining ODA eligibility. This clarification automatically excludes military aid, anti-terrorism activities and assistance to refugees⁷. The flows usually consist of transfers of resources, either in cash or in the form of commodities or services. Another essential aspect concerns the concessional character of the transfers of money. It means that, to qualify as ODA, loans must be below market interest rates and have a grant element of at least 25 per cent, calculated against a notional reference rate of 10 per cent per annum⁸.

However, if on the one hand ODA definition constitutes a good attempt at harmonizing and monitoring the extremely complex and volatile nature of aid; on the other hand, it does not satisfy the present reality of development cooperation landscape. As a matter of fact, insufficient efforts have been carried out by DAC members⁹ in order to adapt ODA standards to the innovations recently occurred in the aid architecture.

During the last decades, the aid system has grown more complex: new actors joined the arena, new collective issues emerged urging a redefinition of development cooperation's strategies and tools and finally, different forms of financing are now preferred to the traditional ones.

When the current fast changing and various aid landscape is taken into consideration, the limits of ODA definition become more evident. First of all, ODA mainly deals with the means and not with the results of foreign aid¹⁰. Thus, it allows to measure only the financial inputs and not the impact of concessional loans and grants. Nowadays, instead, the universally shared set of MDGs and SDGs focuses above all on the evaluation of result-based objectives and their related impact. The strictly measurement of financial flows is no more sufficient. However, even when solely assessing the inputs of development assistance, ODA parameters are no more adequate as well. Indeed, the current ODA definition does not take into consideration the emergence of new donors, private and non-governmental actors as well as new forms of private and non-programmable financing¹¹.

⁶ Helmut Führer, *The story of Official Development Assistance*, OECD, 1996, p.15

⁷ OECD, 2008, *op. cit.*, p.2

⁸ *Ibid.*, p.3

⁹ The DAC currently has 29 members, representing the main donors of the global aid system. The countries are: European Union, Austria, Belgium, Czech Republic, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Luxembourg, the Netherlands, Norway, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden, United Kingdom, Switzerland, Japan, Korea, the United States, Canada, Australia and New Zealand. The World Bank, IMF and UNDP participate as observers. This limited representation is a cause of further division and fragmentation in the aid system nowadays. New donors, such as China, India, Brazil and other Asian countries, have recently emerged and are becoming very influential. They have been labeled as non-DAC donors. DAC is perceived by these new actors as a 'clubby stile' institution and this aspect contributes to foster further obstacles for collaboration. For more information about this topic see for example: L. Chandy and H. Kharas, *Why Can't We All Just Get Along? The Practical Limits to International Development Cooperation*, J. Int. Dev., 23: 739–751, 2011. Available at: <http://onlinelibrary.wiley.com/doi/10.1002/jid.1797/full>.

¹⁰ Deutscher and Jacquet, *op. cit.*

¹¹ See J-M. Severino and O. Ray, *The End of ODA: Death and Rebirth of a Global Public Policy*, Working Paper n° 167, 2009, p.20-21

Secondly, the entire aid system has shifted, in recent years, towards a new form of open-ended cooperation based on recurrent financial transfers of resources. The logic of the implementation and accumulation of one-off projects or programs, aiming at yielding macroeconomic development results has become outdated¹². The challenges imposed now by new collective action problems urge to attain more systemic effects, through different strategies and interventions. Thus, the traditional project aid proves limited when used as a basis for long-term cooperation, as demonstrated by the current movement away from the financing of circumscribed programmes¹³. This structural change requires different measuring standards of its efficiency and effectiveness, something ODA system cannot provide for the moment.

Another critical aspect of this great shift is the incredible proliferation of multiple stakeholders. The emergence of new global challenges inspired a certain ‘institutional creativity’¹⁴. Unfortunately, at the same time this variety of actors and agendas represents a burden for aid coordination. The usually politically driven motives of foreign aid, especially when state-related and bilaterally pursued introduce an element of partiality, causing a reduction of aid effectiveness. A lack of coordination and of coherence among donors inevitably leads to aid fragmentation¹⁵.

In order to understand the dynamics underway in the development aid system, it is now useful to focus on donor-recipient relations.

Donors and Recipients

The relation among donors and recipients involves power dynamics as well as political dynamics. As a matter of fact, development mostly implies the power to decide, to make public choices that have profound implications for the people involved. However, since donors are normally economically and often politically stronger than recipients, it is evident that such decisions take place in a context of often sharp imbalances of power. Indeed, beneficiaries and affected citizens are often less influential, if not wholly excluded from the decisional processes. Therefore, their autonomy and free will is frequently undermined in development cooperation dynamics. Moreover, aid distribution can also affect balances of power among competing recipient-country interests¹⁶. Hence, aid is never neutral and every time a country decides to allocate a share of its incomes to development cooperation ‘cause’, it is probably serving its primary interests. More precisely, donors’ choices are the product of a compromise between domestic political concerns and priorities and the global imperative for wealthier countries to give aid to poorer ones¹⁷.

Before the establishment of multilateral aid agencies¹⁸, aid was essentially delivered bilaterally. Bilateral aid involves ‘bilateral flows undertaken by a donor country directly with an aid recipient country’¹⁹.

¹² *Ibid.*, p.9-11

¹³ *Ibid.*

¹⁴ *Ibid.*, p.6

¹⁵ See Alice Sindzingre, *Theoretical Criticism and Policy Optimism: Assessing the Debates on Foreign Aid*, IE Working Paper n°1, 2012, pp.31-34

¹⁶ See J. K. Boyce, *Unpacking Aid*. Development and Change, 2002, 33: 239–246, pp.239-240

¹⁷ See N. Gulrajani, *Dilemmas in Donor Design: Organizational Reform and the Future of Foreign Aid Agencies*. Public Admin. Dev., 35: 152–164, 2015, p.153

¹⁸ The first was the International Bank for Reconstruction and Development (World Bank), established in 1946 and at the origin of the multilateral aid system.

Multilateral aid, instead, represents ‘core contributions from official (government) sources to multilateral agencies where it is then used to fund the multilateral agencies’ own programmes’²⁰.

Bilateral and multilateral aid are the principal channels for aid delivery, defining the subsequent relations existing between donors and recipients. Bilateral aid has always been the favourite means for aid transfers from donors’ side, the more convenient and adaptable to donors’ needs. However, not necessarily the most efficient one, nor the most effective.

While multilateral aid has passed through periods of more and less donors’ commitment, contributions to bilateral aid have always been relatively stable, except in certain specific cases, where general falling trends in aid delivery hit the entire system (see paragraph c. ‘A context constantly evolving’ for more examples).

Bilateral development assistance is usually preferred to multilateral cooperation for three main reasons²¹:

- 1) national motives: there are vested interests in delivered programs in ways which benefit the business sector, non-governmental and specifically, humanitarian organizations as well as particular government agencies. These interests are better defended and satisfied through bilateral channels;
- 2) disagreement about development cooperation values and goals: if it is already a difficult task to set development cooperation priorities at a national level, it is even more difficult to coordinate them at the international level. Apart from vested interests, every donor has its own values and ways of perceiving development cooperation purposes, which usually collide. Thus, it proves easier to pursue one’s own goals individually;
- 3) perceived weaknesses of multilateral agencies: they are accused of having demanding and time-consuming procedures while lacking of transparency and accountability measures. More generally, there is insufficient evidence of the effectiveness of multilateral aid.

As evidenced in the latest report of OECD/DAC²², the 72% of total ODA (excluding debt relief) is channeled through bilateral agencies, while the 28% is channeled through multilateral aid agencies. The preponderance of bilateral aid flows over multilateral ones is obvious.

However, bilateral foreign aid presents serious inherent problems, such as a lack of coordination among multiple principals and their respective objectives, as already. Moreover, it entails an ownership problem, deriving from a broken information feedback loop between donors and recipients²³. Basically, only donors have political leverage over decision-making processes. In this way, they can impose resolutions on recipients without the latter having a say in the process.

In an attempt to find a solution to these issues, donors have essentially implemented two models: cooperation and coordination.

¹⁹ See OECD, *DAC Glossary of Key Terms and Concepts*, available at: <http://www.oecd.org/dac/dac-glossary.htm> and OECD, *Glossary of AidFlows Terms*, available at: <http://www.aidflows.org/glossary.pdf>

²⁰ *Ibid.*

²¹ See Ngaire Woods, *Rethinking Aid Coordination*, GEG WP No 66, 2011, pp.7-8

²² See OECD, *Multilateral Aid 2015: Better Partnerships for a Post-2015 World*, OECD Publishing, Paris, p.45

²³ See Bertin Martens, *Why Do Aid Agencies Exist?*, *Development Policy Review*, 23: 643-663, 2005, pp.643-644

The creation of international institutions has allowed donors to pool funding, information, expertise and adopt decisions collectively. Thus, they can cooperate to deliver development assistance, with some degree of neutrality, autonomy and mutually recognized stability²⁴. The IBRD and IDA of the World Bank were created with agreed norms and rules precisely to reduce transaction costs and enabling the achievement of longer-term and collective goals.

Besides, multilateral aid agencies can help solving the ownership problem through mediation. Indeed, they supply an institutional setting that responds to a demand from donors as well as recipients, partially fulfilling both donors' and recipients' preferences²⁵.

Through the OECD/DAC international donor-driven model of coordination, instead, development assistance activities are organized so as to take place in harmony and not to hinder one another²⁶. It involves an international reporting and standard-setting system, based on agreed tight definitions, as ODA for example. At present, the OECD/DAC members would like to induct emerging economies and other new donors into this coordination system. Unfortunately, from emerging economies' point of view this model lacks legitimacy and efficacy. Clearly, this represents an obstacle for donors in order to attain their goal. As a matter of fact, donors' constant attempts at maximizing their control over development projects and programs (often following their interests, public relations and accountability needs) are not highly regarded from emerging donors²⁷.

It is evident that political and power imbalances have not been resolved yet. As far as ownership is concerned, until this moment insufficient actions have been undertaken and much can still be done (see paragraph c. *The challenges of a global governance system*).

Multilateral Aid

At the time of the Marshall Plan, which remains the best example of official aid success, multilateral aid channels were simple and effective. Development projects were easily identifiable and recipient countries possessed strong planning and implementation skills. Indeed, Europe already had important infrastructures and an advanced level of political and social organization.

When efforts were reoriented towards the development of poor countries, instead, a more complex picture emerged. By 1960, more potential recipient and donor countries joined the arena. In this same year, the International Development Assistance (IDA) agency of the World Bank was established. There was a generally perceived need for a multilateral aid mobilization framework, which could function as a mediator between rich and poor countries, providing for effective 'burden sharing' among donors²⁸. This basic framework (Figure 1) worked well through the early 1990s.

²⁴ *Ibid.*, pp.656-659

²⁵ *Ibid.*

²⁶ Woods, *op. cit.*, pp.10-12

²⁷ *Ibid.*, pp.14-15

²⁸ See Homi Kharas, *Trends and Issues in Development Aid*, Wolfensohn Center for Development Working Papers, n°1, 2007, pp. 3-5

In this new context of multilateral aid mobilization, aid agencies presented several distinctive functions²⁹:

- 1) they could act as intermediaries reducing ex-ante and ex-post transaction costs in aid transfers³⁰ and providing a coordination function for mobilizing and disbursing funds;
- 2) they provided technical expertise to ensure that projects and programmes were effectively designed.

However, from the early 1990s onward, the traditional system of multilateral aid was put under strain by a series of crucial changes³¹. First of all, the agenda of multilateral aid agencies became more extended: the prime objective of economic growth, which have guided development cooperation action from the beginning (see paragraph b. *A context constantly evolving*) was integrated in the general goal of poverty reduction. Furthermore, the now basic principle of poverty reduction has been combined with a set of newly collective actions problems, such as health and security threats as well as environmental and climate change issues. All these new priorities appear in the present global agenda and represent the consequences of some globalization's side effects.

Following the evolution of development cooperation objectives, the traditional aid architecture was challenged by a proliferation of actors both from donors' and recipients' side. The system became more and more complex with each additional player. On the donor side, a multitude of bilateral and multilateral agencies flourished and an impressive number of 'non-DAC' donors emerged as well³². Besides, multiple new private donors (such as national and international NGOs, philanthropic foundations etc.) started channeling relevant amounts of aid, further complicating the already precarious balance of development aid system. Still now, the main obstacle toward more harmonization and coordination is represented by a lack of communication and of essential information sharing between public and private actors. The implementation of these practices could help prevent the worsening of the actual fragmentation in aid procedures, which is in addition heavily affecting recipients' programmes implementation³³.

On the recipient side, instead, recent trends toward more decentralization have been noticed. Sub-sovereign and non-state entities (like municipalities, local NGOs, private firms etc.) are trying to involve the ultimate beneficiaries of development cooperation action, thus focusing decision-making procedures and operational management on local actors³⁴.

²⁹ *Ibid.*

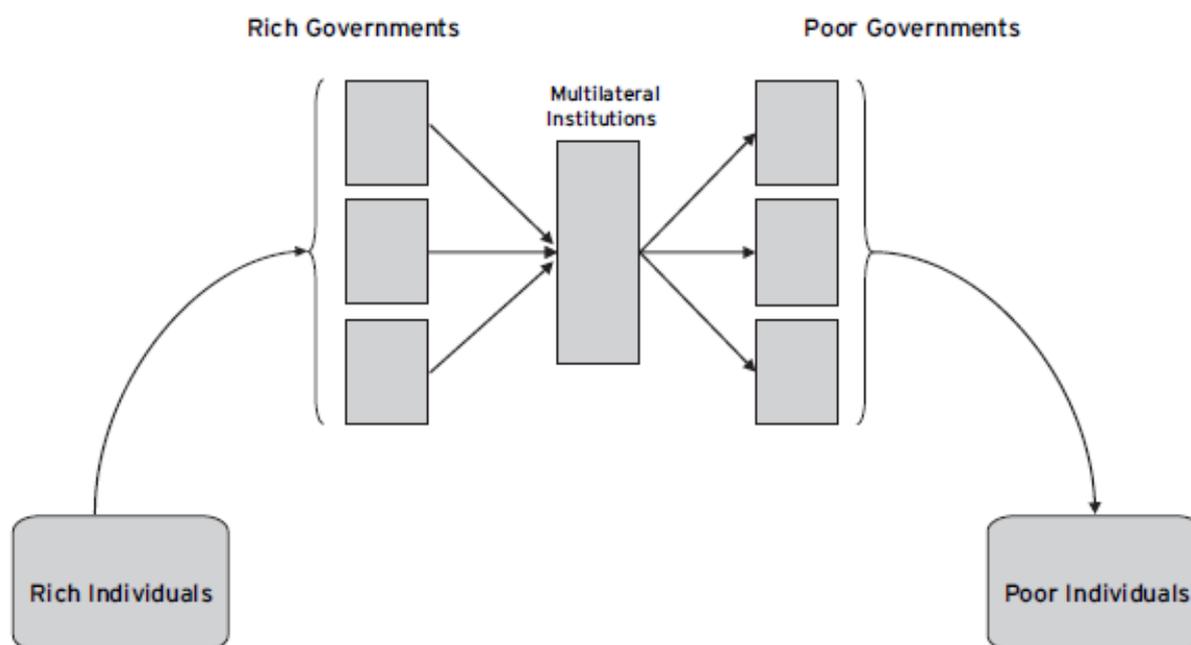
³⁰ See for example in Martens, 2005, pp.647-649: 'Transactions always carry an element of **uncertainty**, which can be overcome through contractual arrangements or governance structures, including commitment devices to contract execution, which are **costly** to negotiate ex-ante and to enforce ex-post contract signature. Obviously, the more is invested in **ex-ante realized transaction costs** (i.e. obtaining information about the recipient and effectively carrying out the transfer), the lower the **ex-post costs** will be (that is the recipient's intention concerning the use he's going to make about the transfer). Thus, aid agencies work to shift the transaction trade-off curve to a higher level of efficiency, lowering transaction costs for a given degree of uncertainty'.

³¹ Deutscher and Jacquet, *op. cit.*

³² Kharas, *op. cit.*, pp.4-5

³³ *Ibid.*, p.17

³⁴ Deutscher and Jacquet, *op. cit.*

Figure 1: a simple representation of aid architecture

Source: Homi Kharas, *Trends and Issues in Development Aid*, Wolfensohn Center for Development Working Papers, No. 1, 2007, pag. 4

All these changes have had an important impact on the capacity of multilateral agencies to limit transaction costs and raise cost savings, increasing the chance for bad repercussions on the efficiency of their aid delivery capacities. Consequently, in recent years, multilateral aid organizations have been the target of sustained criticism and skepticism from the part of tax payers, civil society organizations as well as new bilateral donors. Efforts to improve the present situation have been made in order to incentivize the capacities of donors as well as to increase their levels of efficiency and efficacy³⁵. Nonetheless, it is still difficult to guarantee an effective and harmonized implementation of these measures by all donors, because they are usually perceived as aiming at preserving the traditional framework of development assistance, strongly influenced by Northern countries' interests and beliefs and less open to a balanced participation by all the donors involved.

The key challenges of the present aid architecture, deriving from a largely 'top-down', supply driven and self-referential 'aid business'³⁶, cannot be resolved through the actual means of aid governance. The recent claims for more transparency and accountability reforms in multilateral aid agencies are mainly the consequences of a monopolized, inefficient and unequal development aid system, which is slowly losing its legitimacy.

Will development cooperation continue to be governed and managed in this way or are we at a turning point?

³⁵ See for example the Paris Declaration on Aid Effectiveness (2005) and the Accra Agenda for Action (2008), fixing five major principles to effectively and efficiently guide development cooperation action, that is ownership, alignment, harmonization, focus on development results and mutual accountability. For more information see OECD resources on Paris Declaration and Accra Agenda for Action available at: <http://www.oecd.org/dac/effectiveness/parisdeclarationandaccraagendaforaction.htm>

³⁶ Deutscher and Jacquet, *op. cit.*

b. A context constantly evolving

Aid purposes have frequently been the object of theoretical questioning by scholars of international relations. From a realist point of view, foreign aid can be interpreted as a tool for enhancing national power and security as it was the case during the Cold War. In a substantially anarchic system, the ultimate impact of aid on the poor is usually incidental or instrumental. Taking into consideration Marxist and dependency theory beliefs, foreign aid can be explained as a means of dominant states to control and exploit developing countries. For liberal internationalists, instead, aid represents a way for states to cooperate while addressing problems originated from interdependence and globalization³⁷.

None of this theoretical perspectives is sufficient alone to explain the complexity of aid purposes and of the development cooperation context, since other factors have to be considered, such as political, economical and social circumstances. In the past sixty years various interpretations concerning the notion of development have been formulated. Indeed, the concept is essentially a ‘contested’ one³⁸. Its importance is irrefutable, but there will never be an unanimous consensus on the proper interpretation and application of the notion³⁹. Only suggestions can be made on the specific meaning assumed by this concept in a particular time period.

The evolution of development notion involves both elements of continuity and change. Hence, it can be interpreted as a continuous intellectual battle between a ‘mainstream’ dominant opinion about development and a ‘critical counterpoint’, fundamentally questioning the predominant values and societal aims of the mainstream one⁴⁰. In such a process, the hegemonic thinking generally incorporates certain aspects of the conflicting ideas, unless they are considered too radical or incompatible with the mainstream notions. This particular dynamic entails a widening process of the possible ways of understanding and approaching the concept of development as well as new manners of influencing practical strategies and policies. As a matter of fact, the evolution of development cooperation can essentially be interpreted as a continuous confrontation among three main actors: the state, the market and the civil society. These actors are always engaged in intense power relations among them and when the strongest one succeed in imposing its values on the others, he also gains largest influence on the contemporary development discourse⁴¹.

Hence, to have a clearer picture of what development cooperation represents today, it is useful to pass in review the main phases of its path from its inception, analyzing the most influential economic and political factors involved and the consequences they brought about. Specific attention will be paid to the role of donor and recipient countries as well as to multilateral agencies’ approach toward development cooperation strategies.

³⁷ For more information on Realism, Liberalism and Historical Materialism theories, see Alan Collins, *Contemporary Security Studies*, third edition, Oxford University Press, 2013.

³⁸ See Benjamin Knutsson, *The Intellectual History of Development. Towards a Widening Potential Repertoire*, Perspectives n° 13, 2009, p.2

³⁹ *Ibid.*

⁴⁰ See Hettne’s theory of ‘*mainstream-counterpoint dialectics*’, in Knutsson 2009, pp.4-5

⁴¹ *Ibid.*, p.6

The history of development cooperation can essentially be divided into two macro periods: a formative one and a consequent phase of transformation⁴². During the formative years (1945-1980), development cooperation theory started to form around the main paradigm of economic growth and its direct relation with progress. However, already during the 1970s this blind trust in achievable economic growth began to be questioned and new interpretations flourished, contributing to the cooptation of more social and human aspects in development theory.

Instead, during the transformative phase (1980-2000) a neoliberal ideology made inroads and development assistance began to be conditioned by donors terms and recipient states were basically enforced to respect them. Market liberalization became the main objective and at the same time, the favorite means for assuring development. However, after the end of the Cold War, during the 1990s, development concept started acquiring a more general and comprehensive meaning. A new importance was given to environmental and social problems and greater attention was put on individuals' welfare and participation. Nevertheless, these last achievements did not shelter development theory and practices from civil society's (NGOs) skepticism and widespread criticism.

Formative years

1945-1965: A complete trust in economic growth's paradigm.

The general historical context in which development ideas took root was characterized by the emergence of Cold War confrontation. Europe was in a phase of post-war reconstruction, decolonization has begun and international organizations were just been established⁴³. The two new superpowers (USA and Soviet Union), representing two different and competing economic systems, soon undertook a worldwide race for political influence and security became their first concern. Fearing that communism would exploit the precarious situation of European devastation, contained measures were immediately launched by USA⁴⁴. However, most of the superpowers' confrontation took place in the South of the world⁴⁵, where the European colonial system had begun to crumble and new states were emerging. Both USA and USSR were guided by ideological and geopolitical interests in a constant game to assert their influence.

⁴² Dann, 2013, *op. cit.*, pp.48-51

⁴³ Specifically, the United Nations (1945) and the Bretton Woods Institutions. The UN, since its inception, drew attention to the importance of directing aid to support social productivity in the interests of global welfare. The Bretton Woods Institutions, instead, including the IMF (1945), the WB (1946) and the GATT (1947), lately converted into WTO in 1995, were mainly concerned with promoting the stability of the monetary system, promoting long-term economic growth through aid and credit and encourage trade through tariffs reduction. For more information see Stephen Browne, *The Rise And Fall Of Development Aid*, UNU-WIDER; Working Paper No 143, 1997.

⁴⁴ An impressive aid plan for the reconstruction of Europe was presented in 1947 before the US Congress by the Secretary of State, George Marshall. The success of the Marshall Plan was extraordinary and it soon became a reference point for future international assistance.

⁴⁵ For more information see also Odd Arne Westad, *The Global Cold War*, 2007.

In this period, development became more or less synonymous with economic growth and capital investment turned out to be an essential instrument, in order to achieve economic progress⁴⁶. Development thinking in this period was mainly dominated by modernization theory⁴⁷. A recreation of the successful economic and social development of modern Western societies was possible, achieving well defined and clear goals through a series of determined steps⁴⁸.

During this phase, development assistance was substantively focused on large infrastructure projects. Funds were made available for clearly defined single projects, since they were more economically justifiable and easy to monitor. An important and active role was played by the state, seen as the principal agent and guarantor of economic development⁴⁹. It is in this same period that international agencies (IBRD and IDA) were instituted. Their function was limited to guarantee concessional assistance without interfering with recipient countries' domestic affairs. Complete trust was placed in state's planning and interventionist capacities.

1965-1980: The initial optimism starts fading away.

The 1970s constitutes a complex decade in terms of development thinking. The widespread optimism in modernization and development of the previous decade was haunted by new concerns. From a theoretical point of view, two main movements challenged the current modernization thinking: dependency theory and 'another development' movement⁵⁰. Concerning dependency theory⁵¹, it provided a more global analysis of development giving importance also to external factors, instead of limiting to internal factors as in the case of modernization theory. Furthermore, dependency theory's critique of the international economic system became a reference point for the debate on the New International Economic Order⁵². The NIEO's initiative called upon industrialized states to show solidarity with developing countries, guaranteeing more equal global trade relations, international social justice and respect for developing countries' sovereignty in managing their internal affairs. However, demands of the NIEO were never supported by a common consensus and accordingly it never materialized⁵³.

⁴⁶ See for example Harrod-Domar model and Lewis 'two-sector model'. Basically, the role of aid was to bridge the domestic resource gaps of the developing countries by raising the rates of productive investments.

⁴⁷ Dann, *op. cit.*, pp. 72-75 and Knutsson, *op. cit.*, pp.11-12

⁴⁸ In the stages for economic growth, the first condition for 'take-off' was a rise in investment rate, which could be achieved through exogenous injection of capital. For more detailed information see Walt W. Rostow, *The Stages of Growth: A Non-communist Manifesto*, 1960.

⁴⁹ Knutsson, *op. cit.*, p.14

⁵⁰ *Ibid.*, pp-15-19

⁵¹ Dependency theorists analyze the international economic structure in terms of *centre and periphery* and accuse Western countries of having exploited development countries. As a matter of fact, dependency theorists consider underdevelopment not as an original state but as a created condition, caused by external circumstances such as the present international division of labor and colonial penetration. On this base, they urged developing countries to delink from the international economic order and to strive for national self-reliance both through protectionist measures and national initiatives. Knutsson, *op. cit.*, 17-18

⁵² The New International Economic Order was proclaimed in 1974, during a Special General Assembly of the UN. It was then described in further detail in the 'Charter of Economic Rights and Duties of States', adopted during the 29th regular General Assembly in December 1974. For more information see UN resolution 29/3281, available at: <http://www.un-documents.net/a29r3281.htm>

⁵³ Dann, 2013, *op. cit.*, pp.77-79

Concerning ‘another development’⁵⁴ movement, strong emphasis was put on environmental problems and on the exclusion of certain groups’ interests. Both were perceived as direct consequences of the ruling growth-oriented development model. Through this new perspective, development could be contextualized and understood more in relation to local communities.

A last reaction against the conventional economic growth model and its inability to eliminate poverty and inequality is represented by the Basic Needs Approach⁵⁵. BNA was not a unified conceptual system, but it rather characterized itself as a common understanding of the basic human needs, such as nutrition, health care, education and participation in political decision-making processes. It was developed in the first half of the 1970s by international organizations, in particular the World Bank, who accordingly complemented its conventional growth models with a number of social indicators⁵⁶.

Concerning administrative innovations, during this phase individual projects were integrated in multi-year overall programmes. Moreover, aid began to be associated with quantitative targets⁵⁷. However, this target-strategy turned out to be irrelevant, because the goals were often out of reach for donors and generally did not correspond to recipients’ real needs.

During this phase, the state continued to retain its position as the primary instrument of development. However, its role began to be increasingly eroded due to the collapse of the Bretton Woods system⁵⁸. Thus, the balance started to move towards a stronger position of the market.⁵⁹

On the whole, a more complex and multi-dimensional view on development emerged during this phase. Indeed, it became clearer that development could not be solely reduced to economic growth. Reacting to the disappointing effects of previous assistance, donor countries wanted to concentrate more on poverty reduction, accordingly to BNA. However, the reaction of developing countries’ governments toward the BNA initiative turned out to be quite cautious, since the approach threatened ruling elites’ interests⁶⁰.

These changes represent in any case a crucial expansion of the idea of development cooperation.

⁵⁴ Knutsson, *op. cit.*, pp. 19-21.

⁵⁵ *Ibid.*, p.20 and Dann, 2013, *op. cit.*, pp.80-81

⁵⁶ *Ibid.*

⁵⁷ See for example the ODA expenditure, which was fixed at the 0,7% of GNP. See *The Pearson Report. A new Strategy for Global Development*, UNESCO Archive, 1970, available at: <http://unesdoc.unesco.org/images/0005/000567/056743eo.pdf>

⁵⁸ Following the draining experience of the Vietnam War and the US domestic investments in the emerging industrial powers, the Pax Americana became no more sustainable for the United States. USA could no more guarantee the dollar-gold standard and consequently, the fixed exchange system broke down triggering financial deregulation, Knutsson, *op. cit.*, p.15

⁵⁹ *Ibid.*, p.21

⁶⁰ Dann, 2013, *op. cit.*, p.81

Years of transformation

1980-1990: The affirmation of neoliberal ideology.

The 1980s have been defined the ‘lost decade’ of development⁶¹. The role assumed by the state until this moment was radically questioned. From essential instrument of development cooperation, the state became a mere facilitator of market initiatives. In strong contrast with the previous development theories, government intervention was now perceived as problematic, an obstacle to the potential of trade and liberalization in favoring economic growth and wealth. Indeed, according to the neoliberal ideology, a deeper integration into the world market was necessary to every country in need of modernization and development. This appears quite evident from the spreading notions of that period, such as ‘trade, not aid’ and ‘aid for trade’⁶². Thus, neoclassicism became the new dominant approach in development theory.

Two events essentially contributed to the affirmation of this new development approach. First of all, on the political scene of developed world (in particular in USA and UK), governments with an aggressively liberal economic agenda came to power. They adopted high interest rates, market liberalization and public enterprises’ privatization as solutions to favor domestic economic growth.

Unfortunately, these measures further worsen the already precarious solvency capacity of developing countries. Indeed, the following global increase in interest rates, accompanied by a continuous fall in prices for raw materials, plunged many developing countries into a massive debt crisis. Immediately, IFIs adopted new financial tools in order to stabilize the situation. These new means, also known as Structural Adjustment Programs (SAP⁶³), aimed at guaranteeing short-term financing to developing countries on conditional terms. In this sense, they differed both from project and investment lending⁶⁴. Thus the 1970s idea of ‘aid on the recipient terms’⁶⁵ was suddenly replaced by a new doctrine: the ‘Washington Consensus’⁶⁶.

Towards the end of the 1990s, a certain criticism of current development ideals and practices started spreading from industrialized countries. Also known as post-development⁶⁷, this movement perceived bilateral as well as multilateral aid institutions as mere instruments of commercial interests, inefficient and self-referential. The inefficiency of development-aid system was becoming an urgent issue to solve.

⁶¹ Knutsson, *op. cit.*, p.22

⁶² *Ibid.*, p.24

⁶³ Structural Adjustment Programmes consisted of conditioned short-term financing aiming at the implementation of macroeconomic reforms in the recipient countries. They aimed at increasing the economic efficiency of these countries, thus improving long-term economic performance, through the adoption and implementation of compulsory structural adjustment policies involving measures such as: privatization; deregulation of markets; freeing interest rates, exchange rates, wages, prices; trade reform, foreign investment reform etc., *Ibid.*, p.23-24

⁶⁴ Dann, 2013, *op. cit.*, pp.104-105

⁶⁵ Knutsson, *op. cit.*, p.24

⁶⁶ Washington Consensus: a set of ten economic policy prescriptions promoted for insolvent developing countries by the IFIs and US Treasury Department. The term was coined by English economist John Williamson in 1989. It has come to be used in a second and broader sense to refer to a general orientation towards a strongly market-based approach, known as neoliberalism. For the ten prescriptions see Alan Collins, *Contemporary Security Studies*, third edition, Oxford University Press, 2013.

⁶⁷ Dann, 2013, *op. cit.*, pp.136-138 and Knutsson, *op. cit.*, pp.26-27

1990-2000: Sustainable development and civil society's emerging criticism.

The early 1990s marked the end of the Cold War and a general redefinition of the entire world order. Aid flows dramatically decreased, since the previous geopolitical and security motives went missing together with the crumbling of the ex USSR. Suddenly, Western industrialized nations remained the only donors. This fact contributed to a broad expansion and understanding of development concept and goals and to a redefinition of donor-recipient relations. First of all, through the publication of the Brundtland Report⁶⁸, in 1987 and the subsequent adoption of the global Agenda 21⁶⁹, major attention was dedicated to the environmental aspects of development. A belief started spreading that sustainability could be achieved through multilateral actions instead of isolated national pursuits. Then, the publication of UNDP Human Development Report⁷⁰ and the contemporary work of the Indian economist and philosopher Amartya Sen contributed to gradually shift the focus of development thinking on individuals⁷¹. Democracy and human rights gained a more central position in the debate and donors adopted conditionality as a means to enforce their implementation in recipient states.

The participation of recipient countries in the priority-setting of development cooperation action was finally appointed by the adoption of Poverty Reduction Strategy Papers (PRSP)⁷² by the World Bank in 1999.

Development acquired a more general and holistic character during the 1990s and finally freed itself from the original economic core. At the same time, the legitimacy of development aid system was called into question. This new wave of criticism went along with the emergence and proliferation of NGOs already during 1980s, both in donor and recipient countries.

The continuous acceleration of economic globalization, already began in 1970s with the institution of a financial market and the technology and communication revolution, further modified the context in which foreign aid could be implemented. The role of the state, already pulled back at the beginning of 1980s, left the place to market, the main focus of development discourse until now. Nevertheless, civil society (NGOs) exactly in this same period began to acquire growing influence in development practice. Thus, the action of globalization entailed the emergence of a new complex global order, in need for some kind of regulation. It is precisely in this new global context that multilateral aid agencies, donors, recipients, NGOs and civil society organizations are carrying on development cooperation, dealing with new global issues and organizational challenges.

⁶⁸ Dann, *op. cit.*, p.117. For more information see Report of the World Commission on Environment and Development, *Our Common Future*, available at <http://www.un-documents.net/our-common-future.pdf>

⁶⁹ *Ibid.* and Knutsson, *op. cit.*, pp.29-30. For more information see also UNCED, *Agenda 21*, available at: <https://sustainabledevelopment.un.org/content/documents/Agenda21.pdf>

⁷⁰ Dann, 2013, *op. cit.*, pp.118-121. For more information see UNDP, *Human Development Report*, New York: Oxford University Press, 1990 available at: http://hdr.undp.org/sites/default/files/reports/219/hdr_1990_en_complete_nostats.pdf

⁷¹ *Ibid.*

⁷² PRSP's mechanisms basically involve national strategies developed by the governments of the recipient countries, incorporating consultations with national civil society groups and finally approved by the IMF and the WB, *Ibid.*, pp.121-122 and Knutsson, *op. cit.*, p.31

c. The challenges of a global governance regime**From a 'sovereign regime' to a 'global governance regime'**⁷³

The accelerated action of globalization and the simultaneous emergence of a global governance regime have contributed to transform the structure of the international system. Indeed, we are now in a period of institutional innovation. In order to understand to what extent this shift has influenced development cooperation action, it will be useful to briefly analyze how the international system evolved into the present global system.

Before WWII, state sovereignty was at the base of international politics and great importance and confidence were placed in governments' capacities of representing national aspirations and at the same time, of guaranteeing national welfare. After WWII, however, an increasing number of organizations and institutions began to develop. Then, the subsequent emergence of post war global economy favored a further expansion of transnational relations and interdependence. In this same context, the achievement of economic development became an internationally sanctioned objective⁷⁴. Thus, national needs and welfare concerns previously expressed by the sovereign state were transposed at the international level and articulated by organizations such as the World Bank, IMF and WTO. As a consequence, the ex-colonies who gained formal independence between 1960s and the beginning of 1970s experienced a tension between the pursue of their collective freedom and the necessity of respecting certain standards, concerning the 'national project', already delineated by the international society⁷⁵. However, up to late 1970s, development agencies limited their action in assisting the development of their clients, avoiding any interference with national governments and letting them taking the initiative. Between 1970s and 1980s, instead, consequently to economic and development failures and to a neoliberal turn in development approach, the role of state gradually changed and international aid institutions began to gain more power and influence.

The expansion of multilateral institutions and the subsequent growing interdependence were considered as an anomaly by neorealists, supporting the dominant theoretical position at that time⁷⁶. Indeed, from neorealist's point of view, the ideal of global governance was considered as 'nonsensical' or at least 'epiphenomenal'⁷⁷ to the balance of power between states. Soon a new theory emerged, as a rational answer to this increasing interconnection among states: 'neoliberal institutionalism'⁷⁸. According to this new interpretation, the extremely positive trend in institutions' development was due to their functional role in facilitating cooperation among states. Basically, international organizations allowed states to overcome the barriers of a given anarchic international system, providing a structure for 'repeated interactions', while enabling the flow of useful information. Accordingly, the consolidation of an international system, based on the progressive use of multilateral institutions as easier and more efficient means of cooperation changed the environment in which states have operated until that moment.

⁷³ Williams, *op. cit.*, p.4.

⁷⁴ *Ibid.*, p.6.

⁷⁵ *Ibid.*

⁷⁶ See T. Hale and D. Held, *Handbook of transnational governance. Institutions and Innovations*, Polity Press, 2011, pp.5-6.

⁷⁷ *Ibid.*, p.6.

⁷⁸ *Ibid.*

Another significant shift towards the creation of a global governance regime occurred right after the end of the Cold War confrontation. Interdependence rose steeply under the action of both an extensive and intensive globalization's effect. Political institutions underwent a further transformation beyond the usual state centric system at the origin of intergovernmental organizations. This time, domestic and international politics' issues, practices and mechanisms further merged together, while non-state actors gained increased relevance in global politics and soft forms of rule-making became more widespread. The institutional landscape grew more complex and new modes of eliciting compliance with transborder standards were required. In this ever-expanding context, transparency became an increasingly common approach to regulation.

At the moment, it is probably more adequate to speak about a 'governance conundrum'⁷⁹, where collective action has developed into 'hypercollective action'⁸⁰. Indeed, this incredible proliferation of actors have led to an extreme fragmentation of priorities and means, triggering further disorganization and incoherence. Anyway, international policies aiming to provide for a variety of global action problems are gradually emerging. However, it is often difficult to identify the policy preferences of these heterogeneous actors and ultimately make them to converge. Actual processes of international cooperation and decision-making are, indeed, extremely complex.

Different interpretations have been formulated to define global governance, giving some reference points to deal with this extremely intricate issue.

Basically, the concept of governance involves processes and institutions both formal and informal, 'whereby rules are created, compliance is elicited and goods are provided in pursuit of collective goals'⁸¹. Thus, global governance is generally understood as regulation and administration of a global space⁸². However, entities involved in this rule-making and power-exercise action at a global scale are not necessarily authorized by a general agreement to act⁸³, hence implying a possible lack of legitimacy. This interpretation is further emphasized in the perception of global governance as an attempt made by Western countries to impose a kind of 'governing order on those places and issues that are seen to pose a 'threat' to the kind of order they wish to see constructed'⁸⁴. Once agreed with this analysis, development can then be understood as a means enabling global governance construction, while the heavily depoliticized recipient states become mere administrative vehicles for development and global governance.

Challenges in achieving 'global development'⁸⁵

From this short excursus it emerges that the actual global system is really complex and fragmented. Hence, it is not easy to bring about common objectives and set unanimous priorities.

⁷⁹ See Jean-Michel Severino, *The End of ODA (II): The Birth of Hypercollective Action*, Working Paper n° 218, 2010, p.3.

⁸⁰ *Ibid.*, p.11.

⁸¹ Hale and Held, *op. cit.*, pp.12-15.

⁸² N. Krisch and B. Kingsbury, *Introduction: Global Governance and Global Administrative Law in the International Legal Order*, EJIL, vol. 17 n°1, 2006, p.1.

⁸³ R. O. Keohane, *Global Governance and Democratic Accountability*, 2002, p.3.

⁸⁴ Williams, *op. cit.*, p.13.

⁸⁵ Knutsson, *op. cit.*, pp. 35-36.

However, an accepted concept of ‘global development’ exists, ideally aiming at creating a global political community based on a set of basic human values, such as freedom, solidarity, tolerance etc. through means like intercultural dialogue and above all, more symmetric power structures⁸⁶. Indeed, all actors are important in the creation of suitable conditions. Unfortunately, since development is usually a political process, as reaffirmed many times in the precedent paragraphs, there exist sheer imbalances of power and resources, often forcing a large share of recipient countries in a fundamental and long-lasting position of dependence. Moreover, donors’ interventions usually do not fit with recipients’ priorities and fundamental needs.

The increasing and usually biased exercise of public power in the present global governance system has entailed the rise of serious concerns about legitimacy and accountability. Now more than ever, global institutions and actors are interested in strengthening their legitimacy. In this sense, transparency, participation and review as well as effectiveness have become important dimensions in global governance.

To sum up, the recent changes occurred in the international landscape has led to a more complex and fragmented global system. The growing merger between domestic and international law, tools and objectives brought to a decreased importance in global regulation of domestic instruments. Consequently, the increasing global system performance of state functions has indirectly contributed to an attenuation of sovereign equality. This represents a problem for many developing countries, since now the most powerful actors can fulfill far-reaching regulatory functions without any possibility of dialogue or reaction for the weak ones. This substantial inequality can be mitigated to some extent by rights to participation and review of the affected states as well as by means of transparent and accessible public information⁸⁷.

Can real equality be ensured by these means? What is the role of transparency and accountability mechanisms in this context? Can they really help eliminate the gap between powerful and weak actors, thus restoring a certain balance in global development relations? In the next section, a conceptual and theoretical overview will be presented concerning transparency and accountability notions. It will help to build a frame for further analysis and theoretical interpretation of World Bank’s and EU’s external accountability methods.

2. Transparency and Accountability

The organization of the actual global development system poses several structural problems to a correct and fair conduction of development cooperation relations. As already said before, a shift occurred from the traditional international system, based on the sovereignty and on the power of the states as its principal and shaping actors to a global governance system, based on the interactions of many different actors (intergovernmental organizations, transnational corporations and international non-governmental organizations), but ultimately lacking an adequate level of legitimacy. Subsequent to this shift, traditional mechanisms to hold power-wielders accountable and thus limiting any abuse of power are no more viable.

⁸⁶ *Ibid.*, p.39.

⁸⁷ Krisch and Kingsbury, *op. cit.*, pp.11-12.

Concerning the development aid system, the distribution of power among the various actors involved is clearly uneven and unbalanced. However, another aspect adds to this first factor of division, worsening the already precarious and fragile system. Multilateral aid agencies turn out to be not adequately accountable to those who are the intended beneficiaries of aid, while they are too accountable to actors who usually pursue their national interests, at the expense of greater efficiency and legitimacy of the entire development cooperation process⁸⁸. Indeed, for international organizations accountability is usually a distributional issue⁸⁹, in the sense that they are far more internally accountable, because of the authorization and support they receive from the states that created them and financially support them. However, significant external accountability gaps remain, every time an affected group cannot effectively call power-wielders and responsible actors to account for the damaging consequences of their decisions and actions.

For the purposes of this work, the focus will be on ‘public accountability’⁹⁰, conceived as the set of mechanisms available to limit abuse of power in matters of public domain, since development cooperation essentially includes matters of public interest. Then, a second purpose involves the analysis of the elements, the standards, the functions and the types of public accountability, especially in relation to multilateral aid agencies.

d. It is all a matter of power relations

Transparency and accountability can be understood as inherently relational concepts⁹¹ and secure means to fair and equitable governance. Recently, they have been increasingly used in the political discourse, precisely for their evocative meanings linked to an idea of trustworthiness and to the possibility of making powerful institutions more ‘responsive’ to their respective constituencies. However, from this broad perspective, they appear also as incredibly malleable and elusive terms. Indeed, especially in the case of accountability, it is often difficult to accurately define what this concept really means and implies and consequently, what type of relation it maintains with the notion of transparency.

Transparency is generally considered a key feature of good governance and an essential condition for accountability⁹². Actually, in conventional wisdom it is believed that transparency possesses such a power as to even ‘generate accountability’⁹³. Even if transparency is a necessary condition and the most cited means for achieving accountability, it is far from sufficient in producing accountability’s positive overflows.

⁸⁸ Dann, 2013, *op. cit.*, p.517.

⁸⁹ See R. O. Keohane, *Global Governance and Democratic Accountability*, 2002, p.19.

⁹⁰ See Mark Bovens, *Analyzing and Assessing Accountability: A Conceptual Framework*, *European law journal*, 13: 447–468, 2007, pp.11-12.

⁹¹ See Jonathan Fox, *The Uncertain Relationship between Transparency and Accountability*, *Development in Practice*, 17: 663-671, 2007, pp.663-664.

⁹² See R. MCGee and J. Gaventa, *Shifting Power? Assessing the Impact of Transparency and Accountability Initiatives*, IDS Working Paper 383, 2011, p.11.

⁹³ Fox, *op. cit.*, p.664.

Transparency

Usually, the possession of vital and relevant information is considered as a form of power, since it implies the capacity to control and use such information for one's own purposes. Taking into consideration the development cooperation context, it is important to understand what are the specific power relations at play between the main actors of the system: international organizations, states, NGOs and the public and what kind of consequences imply a specific distribution of power among them.

Usually, states and international organizations own the highest concentration of information and hence of power in development aid system. Thus, evident democratic deficits exist between these organizations and NGOs, the public and ultimately, the affected beneficiaries of the projects. However, this secrecy has recently given rise to suspicions concerning the workings of multilateral organizations, causing in this way a clear reduction of their legitimacy and of their effectiveness. In order to alleviate these democratic gaps, international organizations have begun adopting transparency measures and instruments in the last twenty years approximately. In this way, they aim at improving their image and giving evidence that they are acting in the public's interest.

Before passing in review what are the main instruments of transparency and what kind of circumstances can influence their adoption and their very same existence inside a given international organization, it is first necessary to give a definition of the notion.

At its most basic, transparency can be defined as:

*'the ability of B to receive information from A.'*⁹⁴

The word *ability* entails essentially two main dynamics⁹⁵:

- from the side of the NGO, public or affected person, it implies a selective capacity concerning the type of information received and hence an active role, instead of a passive one. Indeed, not all the information offered by a given IO has the same level of importance. In many cases, the huge amount of information delivered qualifies as merely useless 'propaganda';
- from the side of the IO, instead, this ability is subject to what kind of information the organization can release and how ultimately, it implements these rules.

As already said before, IOs are usually internally accountable to the governments of their member-states. Unfortunately, the same degree of accountability does not occur as far as the societies of these states are concerned. Indeed, if an IO is rather transparent toward member states, this does not automatically entail a free flow of information from the IO to the public of these governments.

⁹⁴ See A. Grigorescu, *Transparency of Intergovernmental Organizations. The Roles of Member States, International Bureaucracies and Nongovernmental Organizations*, *International Studies Quarterly*, vol. 51, 2007, p.626

⁹⁵ *Ibid.*, pp. 626-627

In order to be guaranteed, transparency need specific instruments. Public access to information generally take place through ‘proactive dissemination’ or ‘demand-driven access’⁹⁶. In the first instance, the governments or IOs make public the information regarding their activities and performance independently. In the second instance, instead, an institutional commitment has been assumed in order to answer to specific citizens’ requests concerning documents or information otherwise inaccessible. In this second case, instruments can be traditional freedom-of-information laws⁹⁷ or rather ombudsman, until investigative bodies such as the World Bank’s Inspection Panel.

The existence of ‘downward transparency’⁹⁸ instruments can be influenced by different factors⁹⁹.

The structure of IOs governments

Usually, member-states posses a high degree of monopoly over information and they try to maintain a continuous control on it. However, some IOs present particular structures, enabling the participation of other actors in the decision-making process¹⁰⁰. In this case, public-information policies are more easily adopted, since the information-sharing with actors that are not part of the executive branch already facilitates the erosion of governments’ control over IO’s information, reducing a probable opposition to transparency initiatives.

Number of issues

The adoption of transparency rules is inversely proportional to the number of issues, which constitute the object of negotiations inside the IO. Indeed, when an IO have to deal with multiple issues, the nature of its inter-state negotiations will be far more complex and generally more confidential, because often short-term concessions has to be made in exchange for long-term results. Thus, IOs with limited and more technical or specific issues are far more favourable to institute transparency rules, than IOs dealing with numerous and complex issues.

Scandals

The publication of scandals concerning the dubious and usually illegal conduct of certain IOs has a great leverage on the adoption of transparency policies in these same organizations, since it entails an erosion of IOs’ legitimacy. In this case, the approval of transparency measures is directly proportionate to the visibility and dissemination of the scandal.

Democratic norms

Transparency is considered a democratic attribute and it is closely related to other democratic norms. Hence, government officials who come from democracies are more prone to support the transparency of an IO, than those who do not come from democratic regimes.

⁹⁶ Fox, *op. cit.*, p.665

⁹⁷ Comprehensive public-information policies should present: a presumed consent to disclosure, precise definitions of the exemptions to the right of access, they should allow for appeal mechanisms and above all, for the provision of information free of charge. Some IOs do not have specific public-information policies, while others do have rules for access to information but often they do not meet all the above criteria. For more info, see Grigorescu 2007, p.628

⁹⁸ Downward transparency: reforms supporting the ‘right to know’ of the citizens and thus enabling a flow of information from the top of the state or of an IO to society. See Fox, *op. cit.*, p.665

⁹⁹ Grigorescu, *op. cit.*, pp.629-633

¹⁰⁰ See for example the case of EU, where the members of the Parliament are elected directly by the public, Grigorescu, *op. cit.*, p.630

Collaboration with NGOs

Transnational NGOs are usually important promoters of transparency policies. Their recent increase in number and influence has allowed them to put far more pressure on IOs that are of greater interest to them, pushing them to adopt public-information policies¹⁰¹.

Transparency and accountability relationship

Once adopted, transparency policies need also to be adequately implemented. However, not all forms of transparency are able to efficiently leverage accountability and a distinction has to be made between ‘opaque’ and ‘clear’ transparency¹⁰². In the case of ‘opaque transparency’¹⁰³, the diffusion of information does not reveal how institutions practically act, from how they adopt decisions to the results of their actions. Instead, through ‘clear transparency’¹⁰⁴, reliable information about institutions’ performance are revealed, thus enabling constructive-change strategies. Yet, transparency is not sufficient alone to guarantee accountability. As a matter of fact, when there is only public access to information, an institution can be defined as transparent but not accountable. Instead, when public and civil-society agencies have also the power and the capacity to demand explanations concerning the information received and through their investigations to produce answers related to the actual institutional behaviour, then they are constructing a right to ‘soft accountability’¹⁰⁵ (Figure 2). If accountability then include also the capacity of these actors to sanction or compensate, the relationship between transparency and accountability is finally fulfilled and ‘hard accountability’¹⁰⁶ can be implemented (Figure 3).

Figure 2: A first approximation of the relation between transparency and accountability

Transparency	Accountability
Dissemination and access to information	
Institutional ‘answerability’	
	Sanctions, compensation and/or remediation

Source: Jonathan Fox, *The Uncertain Relationship between Transparency and Accountability*, Development in Practice, 17: 663-671, 2007.

¹⁰¹ See for example the case of the adoption of World Bank’s information policies, in part due to the action of a group of NGOs that were attempting to extract information about a dam project that the Bank was funding in India. See also J. A. Fox and L. D. Brown, *The Struggle for Accountability: the World Bank, NGOs and Grassroots Movement*, MIT Press 1998.

¹⁰² Fox, *op. cit.*, pp.667-668

¹⁰³ *Ibid.*

¹⁰⁴ *Ibid.*

¹⁰⁵ *Ibid.*, pp.668-669

¹⁰⁶ *Ibid.*

Figure 3: Unpacking the relationship between transparency and accountability

Transparency		Accountability	
Opaque	Clear	Soft	Hard
Dissemination and access to information			
	Institutional 'answerability'		
			Sanctions, compensation and/or remediation

Source: Jonathan Fox, *The Uncertain Relationship between Transparency and Accountability*, *Development in Practice*, 17: 663-671, 2007.

Accountability

The very function of accountability is to ensure that power-wielder actors, that is those who hold power on behalf of others, are answerable for their conduct. Indeed, power can be considered as ‘the essence of politics’¹⁰⁷, but it has also to be controlled, in order to prevent worse consequences directly attributable to an evident abuse of power.

The necessity of accountability derives from a particular characteristic of power: ‘opacity’¹⁰⁸. Indeed, the actor, who want to reach a control over political decision-makers, does not aspire at monitoring everything, from the minimal approved decision to every essential phase of the process leading to that particular outcome. Instead, he will only be interested in the information which are relevant to him. That is the reason why accountability usually assumes ‘imperfect information’¹⁰⁹. In order to obtain this partial control, accountability should provide a way to prevent and redress the abuse of power and this is usually the case when the two fundamental dimensions of these concept are explicitly conveyed, that is ‘answerability’ and ‘enforceability’¹¹⁰. Basically, answerability involves the right to receive information and all the necessary details relative to that particular information. It also implies the right to receive an explanation in order to justify one’s conduct. Instead, enforceability involves the power to impose sanctions and punish improper behavior¹¹¹. These specific dimensions, involving the right to access information, the obligation to provide a justification and the possibility to endure a punishment are usually present, even if not always with the same degree or emphasis¹¹². Indeed, as already said before (figure 2), soft accountability usually limits to answerability and justification, while hard accountability implies also elements of enforcement.

However, accountability has not always possessed this particular connotation. As a matter of fact, in its Anglo-Norman etymology accountability literally means to ‘*render a count*’¹¹³. Introduced after the Norman conquest of England by William I, this practice aimed at auditing and taking note of all the possessions of the new English subjects. In this way, the sovereign could detain property holders to account under the central power of the monarchy¹¹⁴. Therefore, at the beginning the concept was mainly related to financial administration. Today, instead, accountability is mainly considered as a synonym for fair and good governance. The power relation has also changed direction, since now the authorities are held to account by their citizens¹¹⁵. Or at least it should be this way.

¹⁰⁷ Andreas Schedler, *Conceptualizing Accountability*, in *The Self-Restraining State: Power and Accountability in New Democracies*. Ed. Andreas Schedler, Larry Diamond, and Marc F. Plattner. Boulder and London: Lynne Rienner Publishers, 1999, p.13

¹⁰⁸ *Ibid.*, p.20

¹⁰⁹ *Ibid.*

¹¹⁰ *Ibid.*, pag.14-17

¹¹¹ *Ibid.*

¹¹² *Ibid.*, pag.17

¹¹³ Mel Dubnick, *Clarifying Accountability. An Ethical Theory Framework*, in ‘Public Sector Ethics: Finding and Implementing Values’, edited by Noel Preston with C-A Bois (Sydney, Australia: Federation Press; London: Routledge, 1998), chapter 5, pp. 68-81, p.70

¹¹⁴ *Ibid.*, p.71-71

¹¹⁵ Bovens, *op. cit.*, p.6

In order to have a clearer picture of the evolution and the expansion this concept has undergone in the recent years and the consequences its further complication has brought about, it is necessary to go back to the original core sense of accountability, which also constitutes a clear reference point for any additional consideration.

Thus, in its purest and authentic sense accountability means:

*'being called 'to account' to some authority for one's action'*¹¹⁶.

The above-quoted definition involves three important aspects, that need to be clarified. First of all, the notion of accountability implies an external dimension, because 'the account has to be given to another person or agency 'outside' the person or agency being held accountable'¹¹⁷. Secondly, it includes a social interaction or relation, between an actor who looks for answers and possibly some kind of rectification to a previous damage or misbehaviour and an actor who has to respond for his actions and if necessary, accept sanctions¹¹⁸. Finally, the notion of accountability entails also 'rights of authority'¹¹⁹ possessed by the actors who exercise them over the counterpart hold accountable, including the right to demand answers and impose sanctions, if necessary.

Generally, this relation takes place ex-post facto, when there is the possibility to debate and question over the decisions or the actions which have been undertaken.

As already said before, during the years the scope and meaning of accountability has been extended well beyond this core sense¹²⁰. In particular, the notion of accountability is often used interchangeably with concepts such as responsibility, participation, responsiveness or dialogue. However, a clear distinction has to be made between these notions and the concept of accountability.

First of all, the notion of responsibility usually connotes a strictly legal set of secondary rules that apply when the violation of a legal obligation occurs¹²¹. Thus, it characterizes as a narrower concept than accountability. Secondly, responsibility can also stand for 'personal culpability', 'morality' or 'professional ethics', hence involving all 'internal functions'¹²². Accountability, instead, can only imply external functions, such as the responsibility of call to account, demand justifications and impose sanctions at the limit¹²³.

Concerning participation, this notion essentially generates a different type of legitimacy, that is 'democratic legitimacy'¹²⁴, since it involves a certain degree of input-oriented influence in decision-making processes. Accountability, instead, creates 'legal legitimacy'¹²⁵, being based on the fairness of rules and compliance with them.

¹¹⁶ Richard Mulgan, *'Accountability', an Ever-Expanding Concept?*, Public Administration, 78: 555–573, 2000, p.555

¹¹⁷ *Ibid.*

¹¹⁸ *Ibid.*

¹¹⁹ *Ibid.*

¹²⁰ *Ibid.*, p.556

¹²¹ Dann, 2013, *op. cit.*, p.462

¹²² Mulgan, *op. cit.*, p.558

¹²³ *Ibid.*

¹²⁴ Dann, 2013, *op. cit.*, p.462

¹²⁵ *Ibid.*

As far as responsiveness is concerned, it can be classified as an effect of the right application of accountability mechanisms. Specific institutions, such as ombudsmen or administrative tribunals have been precisely designed in order to make public servants more responsive to the public's needs¹²⁶. However, the fact that authorities become more effective and responsive to citizens' claims is a mere consequence of the accountability process.

Finally, dialogue moves from totally different premises than those of accountability. Indeed, it presupposes a democratic debate taking place in a public space between citizens who are essentially conceived as equals. Instead, accountability essentially constitutes an unequal relationship between a superior and a subordinate¹²⁷.

Types of accountability

Depending on who has to be accountable to whom and on the nature of the obligation that exist between these two actors, different types of accountability can be distinguished¹²⁸.

Usually, at a domestic level, authorities are accountable to voters, political parties, elected representatives, media, thus entailing 'political accountability'¹²⁹. They are also held accountable by courts, possessing specific responsibilities, formally and legally conferred from authorities. In this case, the relation is based on 'legal accountability'¹³⁰. However, these two types are impossible to recreate at the international level, since it does not exist a 'global public' nor a 'global court'¹³¹.

It is more likely that 'administrative' or 'social accountability'¹³² occur in the international arena. Concerning administrative accountability, it requires the action of auditors, inspectors and controllers, that is quasi-legal forums exercising an independent and external administrative and financial supervision. Instead, social accountability is based on the relation between interests groups, NGOs and power-wielder actors. These last two types of relations are also frequent in development cooperation.

Nevertheless, when the purpose is to identify who has to be held accountable, the task is equally problematic. Generally, an entire organisation or agency is considered as a unique actor, thus avoiding the difficult issues related to the identification and verification of the responsible individual actors. 'Corporate accountability'¹³³ is usually preferred by legal and administrative forums. However, in other instances 'hierarchical' or 'individual accountability'¹³⁴ are chosen because they are more suitable for political or professional accountability respectively.

¹²⁶ Mulgan, *op. cit.*, p.568

¹²⁷ *Ibid.*, p. 570

¹²⁸ Bovens, *op. cit.*, p. 15

¹²⁹ *Ibid.*, p.16

¹³⁰ *Ibid.*

¹³¹ For more information see paragraph e.: Transparency and accountability in global politics and also R.W. Grant and R.O. Keohane, *Accountability and Abuses of Power in World Politics*, American Political Science Review, vol.99, No1, 2005 as well as Robert Keohane, *Accountability in World Politics*, Scandinavian Political Studies, 29: 75–87, 2006.

¹³² Bovens, *op. cit.*, p.17

¹³³ *Ibid.*, pp.18-19

¹³⁴ *Ibid.*, pp.19

Once the nature of the obligation is taken into consideration, instead, three scenarios are possible: If accountability is mainly based on a principal-agent relation, that is basically on a unequal relationship, where the forum or public is the principal, wielding power over the agent, usually identifiable in public authorities compelled to give an account for their conduct, then it is vertical accountability¹³⁵. This particular type of accountability entails a chain of relations, usually based on the delegation from principals to agents and thus, it easily reflects the majority of political accountability arrangements. Instead, if the relationship concerns two parties who are essentially independent one another or at least ‘relatively autonomous’¹³⁶, lacking any hierarchical relation or formal obligation to be accountable, that is precisely ‘horizontal accountability’¹³⁷. Indeed, this specific relation does not imply legal requirements, but rather moral obligation and hence accountability is given on a voluntary basis. Finally, a third type of accountability can be identified, that is ‘diagonal accountability’¹³⁸. In this particular case, accountability operates through an intermediary body (auxiliary or independent forums, in any case a public organization), who is charged by the principal to supervise the agent’s conduct. It especially works for administrative accountability and it is usually perceived as a form of hierarchic accountability operating in the shadow of an intermediary.

When accountability mechanisms are implemented in a successful and proper manner, they can lead to desirable external effects¹³⁹. As a matter of fact, accountability can directly provide democratic means to monitor and control the government conduct as well as preventing the development of concentration or abuse of power. Then, it can also directly enhance learning capacity, thus improving the effectiveness of public administration. The fulfilment of all these positive spillovers, subsequent to the right implementation of accountability measures can help increasing and also restoring the legitimacy of public administration and indirectly promote a more widespread acceptance of the government authority.

¹³⁵ *Ibid*, p. 20 and Schedler, *op. cit.*, p. 23

¹³⁶ Schedler, *op. cit.* p.24

¹³⁷ Bovens, *op. cit.* p.20-21

¹³⁸ *Ibid.*, p.21

¹³⁹ *Ibid.*, p.25

- e. Transparency and accountability in global politics and development cooperation: a way toward greater legitimacy?

Global politics context

Accountability in global politics is essentially interweaved with power relationships. As a matter of fact, different types of accountability mechanisms exist at the global level and each one of them can empower a different actor¹⁴⁰. However, in order to understand what constitutes an abuse of power in global politics and therefore, who has the right to impose accountability measures on power-wielders actors, a clear distinction has to be made between two essential models of power legitimacy. The more common is based on ‘delegation’¹⁴¹. Indeed, multilateral institutions are usually authorized to act by the states, who by means of charters or articles of agreement delegate to these institutions the necessary authority and power to fulfil the purposes for which they were established. Nevertheless, through this specific model international organizations prove to be closely supervised and constrained mainly by the states who founded them¹⁴². That is the reason why usually multilateral institutions try to balance the legitimacy deriving from the delegation model with that originating from the participation and empowerment of other actors, who do not directly delegate any authority to them, but who are nonetheless affected by the decisions and the actions of these organizations. Since the ‘participation’¹⁴³ model is essentially based on power-wielders duty to conform to their constituents’ interests and needs, through its implementation, multilateral organizations tend to increase their responsiveness especially to poor people.

In order to be concretely achieved, accountability at a global politics level needs three important components: standards, sanctions and information¹⁴⁴.

Among all three, information is probably the easiest to attain,. Thanks to the modern means of communication, it has become more affordable to guarantee a widespread availability of information also to the actors less directly involved. Indeed, ‘public transparency’ represents the first functional component of democratic accountability¹⁴⁵ and its purpose is precisely that of facilitating a rigorous evaluation of the performance of public power-wielder actors in decision-making processes.

¹⁴⁰ See R.W. Grant and R.O. Keohane, *Accountability and Abuses of Power in World Politics*, American Political Science Review, vol.99, n°1, 2005, p.40

¹⁴¹ *Ibid.*, pp.31-33

¹⁴² *Ibid.*, p.37

¹⁴³ *Ibid.*, pp.31-32

¹⁴⁴ *Ibid.*, p.41

¹⁴⁵ See T. Macdonald and K. Macdonald, *Non-Electoral Accountability in Global Politics: Strengthening Democratic Control within the Global Garment Industry*, EJIL, vol.7, n°1, 2006, p.105

As regards the standards of accountability, these are usually bound to and depend on the evolution of international legitimacy standards. At the global level, an important source of legitimacy is clearly represented by the law, in the forms of ‘peremptory norms’ (jus cogens) and ‘customary international law’ (opinio juris)¹⁴⁶. However, in many cases, accountability is implemented on the base of standards of conduct articulated in the transnational civil society, constituting informal norms based, for example, on the conformity to human rights or to inherent democratic principles¹⁴⁷.

As far as sanctions are concerned, instead, they are usually implemented by powerful actors, who in this way succeed in ‘imposing’ their beliefs and needs, while having their interests well protected at the same time. This aspect, reflecting an essentially uneven distribution of power among different actors at the global level, triggers important concerns regarding democratic accountability. The fact that usually weak actors lack the capacity to systematically hold powerful actors accountable basically means that they are not able to defend their rights and impose their real needs. This feature partially derives from the actual structure and organization of the global governance context.

As a matter of fact, it does not exist any legal institution able to define and establish a juridical global public with an authority to act globally; nor a sociological global community exist, because only a very small number of people in the world identify and communicate with other people on a global basis¹⁴⁸. Then, given the lack of a genuine ‘global public’, an ‘imagined community’ comparable to publics in well-established democracies¹⁴⁹, it is impossible to replicate domestic political mechanisms to hold authorities accountable.

Nevertheless, even if elections are no more viable in the actual global landscape, other non-electoral mechanisms exist in order to guarantee a certain level of external accountability and in this way, limit the gap created by actual democratic deficits.

An ideal implementation of democratic accountability¹⁵⁰ would essentially imply two basic elements: the above-quoted public transparency and public disempowerment¹⁵¹. In order to establish public transparency, it is first necessary a clear delineation of what a ‘public role’ consist of. Basically, this first transparency features should help to figure out what powers are wielded by which agents and what is each actor’s role within an overall public political decision-making process¹⁵². Another essential transparency’s feature deals with ‘public political action’. Indeed, after having outlined the role of each public agent, it is necessary to disclose both the outcomes of decision-making process and the means employed to enact them¹⁵³. This is a very important aspect, because it opens decision-making process to public scrutiny.

¹⁴⁶ Grant and Keohane, *op. cit.*, p.35

¹⁴⁷ *Ibid.*

¹⁴⁸ See Robert Keohane, *Accountability in World Politics*, Scandinavian Political Studies, 29: 75–87, 2006, pp.77-78

¹⁴⁹ Grant and Keohane, *op. cit.*, p.34

¹⁵⁰ *Democratic accountability* consists of institutional processes for distributing power between publics and those who wield public power over them, with the aim of ensuring that the power exercised by public political agents remains subordinate in some significant respects to the power wielded collectively by publics. See Macdonald and Macdonald, 2006, p.102

¹⁵¹ *Ibid.*, p.92

¹⁵² *Ibid.*, pp.105-108

¹⁵³ *Ibid.*, pp.108-109

Once the information have been revealed, the public should dispose of a specific device in order to facilitate the signaling of its will accordingly to the information obtained. If it is evident that an abuse of power has taken place, then public can disable political agents through the imposition of sanctions (public disempowerment)¹⁵⁴. In this way, the wrongful act can be redressed and the balance between power-wielder actors and the public reestablished.

This is how accountability mechanisms should work in all instances, in order to guarantee a constant equilibrium of the power detained by different actors and to further legitimize the role of each power-wielder agent especially in the actual global governance context. However, this is not usually the case, especially when development cooperation is taken into consideration.

Development cooperation context

Until 1980s, accountability was still interpreted as a financial obligation to account for the use of money spent for development aid. Instead, in the last twenty years accountability has begun to be conceived as an essential aspect for the realization of the main objectives in current development cooperation policies. Three main trends contributed to the affirmation of accountability in the actual development aid landscape¹⁵⁵.

First of all, the end of the Cold War confrontation provoked a growing demand for democratic means both on the donor and on the recipient side. As a matter of fact, through the implementation of these measures, donors hoped to hold recipient governments to account, while spreading and often ‘imposing’ good governance values in these same countries. Concerning developing countries, instead and especially their citizens, accountability was seen as a possible way to hold both their governments to account and also to get improved access to decision-making processes, at a national and international level. Even if the affirmation of these practices did not always result in a *de facto* application and implementation of the same, they nonetheless contributed to the dissemination and evolution of accountability in development cooperation¹⁵⁶.

Secondly, the 1990s deep crisis of meaning and legitimacy that ran over the entire development aid system contributed to focus greater attention on aid effectiveness. Indeed, the shared perception that development assistance had not been as successful and effective as hoped rose demands concerning the effective spending of aid resources and the achievement of better results¹⁵⁷. Under these pressures, a series of reforms were adopted notably aiming at improving development management as well as increasing the level of harmonization among the various actors¹⁵⁸. This reorganization of development assistance entailed a growing interest in accountability practices, especially in their direct employment for development efficiency, probably leading to an indirect gain in legitimacy.

¹⁵⁴ *Ibid.*, pp.112-116

¹⁵⁵ See R. Speijcken and W. Bakker, *The elusive quest for the golden standard: Concepts, policies and practices of accountability in development cooperation*, UNU-MERIT Working Paper Series, 2001, pp.2-5

¹⁵⁶ *Ibid.*, pp.2-3

¹⁵⁷ Dann, 2013, *op. cit.*, pp.152-153

¹⁵⁸ See for example, *Current trends: push for effectiveness amid the ‘rise of the rest’*, in Dann, 2013, pp.152-160

Thirdly, the action of globalization led to a democratic deficit, since the classical state-based accountability mechanisms turned out to be no more viable in the new global governance system. As a consequence, international donors have become far less accountable to citizens in development countries, even if they directly affect their lives through decisions and programs implementation. Recently, especially through the action and technical support of INGOs, the problematic relationship between donors and recipients has strongly focused on the adoption accountability measures as a possible solution. However, their application is still limited to recipient governments¹⁵⁹, while affected people are still left out from the main decision-making processes, without the possibility to even influence them, except in some special cases.

Concerning accountability mechanisms in development cooperation context, three main components have to be distinguished: the object, the subjects and mechanisms and finally standards¹⁶⁰. As already said before, donor-recipient relationship are based on an uneven allocation of power. Since donors have the primary responsibility for the transfer of ODA, they possess far more influence and authority on decision-making processes and therefore, there is a higher probability for them to commit an abuse of power. It results that donors should be the central focus and object of accountability¹⁶¹. Concerning the subjects of accountability, at least four relevant holders exist. These can be other organs within the donor organizations, such as the Board of Executive Directors of the WB, which enact check and balances on other branches, in this case on the WB's management. Then, as already said before, donor and recipient governments are mutually accountable to each other, each one contributing from its side to the correct implementation of aid programs. Finally, the people directly affected by projects and policies as well as general public and peers should have the right to impose accountability measures on power-wielders. Unfortunately, they usually lack even the basic instruments to start an action against the misbehaviour or the violations committed by donors or multilateral organizations. Nevertheless, small progresses have begun to be made and both general and individual oversight mechanisms are spreading within international organizations, enabling also third parties to implement essential accountability measures.

As regards the standards, instead, they basically depend on the various types of accountability at play. For example, in the case of legal and administrative accountability, legal norms are to be checked and commented by means of judicial or quasi-judicial procedures¹⁶². Anyway, every mechanism presumes the adoption of transparency measures, which allow to know concretely what are the relevant information concerning the standards evaluated.

¹⁵⁹ Speijcken and Bakker, *op. cit.*, pp.4-5

¹⁶⁰ Dann, 2013, *op. cit.*, pp.462-464

¹⁶¹ *Ibid.*, p.462

¹⁶² *Ibid.*, pp.462-463

Concerning the functions of accountability, the most important one is to ensure compliance, that is verifying that power-wielder actors conform their actions and decisions to applicable rules and standards. In case of misbehaviour, sanctions may follow if they are considered as necessary and above all, if accountability holders have the power to impose them on donors. Secondly, accountability mechanisms should allow all interested actors to access relevant information. As a matter of fact, through the virtuous cycle activated by the implementation of transparency measures, subjects of accountability, especially affected people and recipient governments, can effectively complain for a violation occurred. Once the competent organs receive this signal, they can start investigating on the original causes of the misbehaviour, acquiring in turn important information to improve their future action. In this way, an important feedback loop is favoured improving multilateral agency's activities. If concretely employed, these procedures can foster trust and further legitimacy in the multilateral organization, especially when they involve affected people, who in turn perceive the organization as more responsive to their real needs¹⁶³.

However, giving that the implementation of accountability measures, especially complaint procedures, have still to be completely institutionalized, it can occur that such mechanisms are haphazardly applied at times. Consequently, if on the one hand they have the potential to favour and improve the responsiveness of multilateral agencies toward their direct beneficiaries; on the other, they can also inhibit somehow as well as discourage bold actions on the part of these same organizations, with possible negative repercussions on the entire aid system¹⁶⁴.

The recent increasing number of active stakeholders in global development cooperation have further complicated the context for the use of effective accountability mechanisms. In order to cope with this issues, new forms of accountability are emerging¹⁶⁵. Nevertheless, three main challenges could prevent the adequate implementation of these new accountability measures¹⁶⁶.

First of all, given that multilateral aid agencies are usually hold accountable by internal control units or external consultants, it is not clear if these actors have always the necessary distance from the actual power wielders. Besides, standard setting is often internalized as well¹⁶⁷. The idea conferred is that of a closed system of self-reporting, a feature which can increasingly reduce the credibility of these organizations¹⁶⁸.

¹⁶³ *Ibid.*, pp.464-465

¹⁶⁴ Grant and Keohane, *op. cit.*, p.40

¹⁶⁵ See P. Dann and J. Sattelberger, *The Concept of Accountability in International Development Co-operation*, Development Cooperation Report 2015, OECD 2015, pp.68-69

¹⁶⁶ *Ibid.*, pp.71-73

¹⁶⁷ See Philipp Dann, *Accountability in Development Aid Law: The World bank, UNDP and Emerging Structures of Transnational Oversight*, Archiv des Völkerrechts, 44. Bd., No. 4, pp. 381-404, 2006, pp.398-400

¹⁶⁸ Dann and Sattelberger, *op. cit.*, pp.71-71

Secondly, as already said before, sanctions even hard ones, do exist in the development cooperation system, but they are usually enforced by powerful donors on recipients. As a matter of fact, recipients governments and affected people do not have the power, nor the right at the moment, to impose any enforcement mechanism against donors' violations and misbehaviours. For example, concerning the World Bank, states and affected people have only one direct mechanism to hold donors accountable, that is the Inspection Panel. However, its investigation reports allow only some kind of reputational sanctioning, through public outcry, for example but they are not followed by any legally enforceable reaction¹⁶⁹.

Finally, people affected by development cooperation projects are often not involved in decision-making processes or they have limited opportunity to challenge and question the practices of donors. The same applied to taxpayers in donors countries, who are often banned from full access to information or have little opportunity to influence decision-making processes¹⁷⁰.

Actually, accountability problems in global development aid system do not lie in the absence of mechanisms, but rather on too little accountability of aid organizations to those who are the intended beneficiaries. Since the focus of this work is to find evidence of the possible solutions to the uneven power distribution in the development-aid system, the following chapter will help to shed light on the external accountability mechanisms available at the moment. It will focus on the two most relevant multilateral donors at present: WB and EU. Do they succeed in achieving a satisfactory standard of accountability, at least on the basis of the reforms undertaken during the last years?

¹⁶⁹ Dann, 2006, *op. cit.*, pp.400-401

¹⁷⁰ Dann and Sattelberger, *op. cit.*, pp.73

CHAPTER II: A FOCUS ON THE WORLD BANK AND THE EUROPEAN UNION

The previous chapter has outlined how development cooperation evolved during the years from its inception, with a particular focus on the changes occurred in the multilateral aid system. Through the second section of the chapter, the main features of transparency and accountability notions have been clarified and above all, these concepts have been put in relation with the global governance context and the challenges presented by the actual development cooperation system.

From this first general analysis, it emerges that the main feature characterizing the present development-aid order is its intrinsic complexity. On the one hand, this aspect tends to favour innovation at a global level, since at the moment there is a plenitude of accountability mechanisms, going beyond the traditional supervisory control usually implemented by member states. As a matter of fact, new forms of accountability concerning administrative, financial and evaluative review mechanisms are flourishing, involving several new actors, fitting diverse series of standards and in some cases, even providing for new forms of sanctions. However, on the other hand, it does not seem clear if all these new accountability mechanisms succeed in adding up to a coherent system. Most of all, there is no sufficient evidence of their capacity to enable the participation of relevant constituencies in decision-making processes, thus allowing them to achieve a real and satisfactory standard of accountability.

As a matter of fact, nowadays multilateral aid agencies have to be accountable not only to recipient governments, but also to the people affected by their projects, as well as to taxpayers in donors countries and finally even to the civil society. Hence, international organizations are usually constrained to satisfy different standards and needs at the same time, at the cost of neglecting the demands of the less prominent actors.

Through an analysis of the two most important multilateral organizations at the moment, notably the World Bank and the European Union, this chapter aims at outlining the strategies implemented by these two institutions in development cooperation affairs and the approaches they have subsequently adopted toward the recipient governments and their constituencies, accountability mechanisms included. Indeed, a further analysis of the transparency, non-judicial and quasi-judicial review measures implemented by these two multilateral organizations will help to clarify what are the possibilities offered by these innovative solutions and also what are the limits preventing an adequate accountability action in their respective organizational contexts.

3. Transparency and accountability of International Organizations

f. Some preliminary clarifications

The most complex aspect of transparency and accountability mechanisms' implementation in a global governance context consists in the problematic identification of a system of reference, of a framework, an order to which these relationships can be attributed in last instance.

As a matter of fact, following the recent shift occurred in governance and public authority, the central paradigm of state sovereignty, considered as the unique and more legitimate source of power at the international level, has lost its preeminence. A new global governance order is emerging, set up on different forms and levels than the previous state-centric one. Unfortunately, this crucial change has not been matched by a subsequent shift in accountability relationships¹⁷¹. Therefore, the only institutionalized accountability measures available at the moment are those applicable at a domestic level. This particular feature has triggered serious repercussions affecting the entire system. Indeed, important accountability gaps essentially related to the exercise of public authority at the global level¹⁷² have now become more evident. Furthermore, in this fast-changing scenario, international organizations have also undergone an important evolution. Indeed, during the past decades they have acquired more power and independence, thus changing their status from that of simple forums to one of actors in their own right¹⁷³.

It is precisely due to the evolution that has occurred in international organizations' status and the subsequent missed adjustment of accountability measures, that a fundamental concern emerged essentially related to the legitimacy of decision-making processes occurring inside these institutions. Unfortunately, the complexity of the actual global system does not help the identification of basic features allowing an efficient implementation of crucial accountability measures. Indeed, the involvement of new actors, especially private entities, have further complicated the already intricate system of accountability relationships based on the existence of competing constituencies. As a matter of fact, global relations are now occurring at different administrative and political levels, basically resulting in an intersection of domestic, regional and international levels. This recent evolution has led to the emergence of multiple and often complementary possibilities to activate accountability mechanisms, not only confined to legal measures and above all open to take into consideration every kind of social relationship¹⁷⁴.

Focusing on the case of international organizations, these institutions are directly and indirectly accountable to different actors, usually corresponding to different constituencies and thus involving also different types and levels of accountability measures.

As asserted by the International Law Association (ILA), 'accountability is linked to the authority and power of an IO'¹⁷⁵ and this particular power entails 'the duty to account for its exercise'¹⁷⁶, therefore to deploy accountability measures.

¹⁷¹ See D. Kurtin and A. Nollkaemper, *Conceptualizing Accountability in International and European Law*, Netherlands Yearbook of International Law, vol.36, n°1: 3-20, 2005, p.6.

¹⁷² *Ibid.*

¹⁷³ *Ibid.*, p.15.

¹⁷⁴ *Ibid.*, pp.9-12.

¹⁷⁵ See International Law Association, *Accountability of International Organization*, Final Conference Report Berlin, 2004, p.5.

¹⁷⁶ *Ibid.*

Since IOs are basically created by their member states, they are usually viewed as being accountable to only a limited range of actors¹⁷⁷. First of all, they are clearly accountable to their member states, by means of hierarchical relations. As a matter of fact, member states usually oversee the decisions and the functions brought about by international organizations, through internal mechanisms generally based on a system of checks and balances and hence, they verify that these institutions are rightly complying with the mandate member states have established for them¹⁷⁸. Secondly, IOs are also directly accountable to other international organizations, with whom they have concluded treaties or international agreements and also to private legal and natural persons with whom they have entered into contractual relations¹⁷⁹. These actors can hold IOs accountable by means of dispute settlement mechanisms included in the agreements they have signed with the respective international organization. However, IOs do also have a legal responsibility toward non-member states, who have been harmed by their actions or decisions. In this particular instance, IOs are generally held accountable through formal or informal means¹⁸⁰.

Among the totality of actors who have the right and above all, the means to access accountability measures against a given IO, there is a specific group who has never been able to exercise any power on these institutions, at least until recently. It is precisely the case of non-state actors having no contractual relationships with a particular international organization, but who have been nonetheless negatively affected by its actions¹⁸¹. These particular actors have succeeded in gaining more relevance subsequently to the affirmation of two parallel trends between the 1980s and 1990s. On the one hand, as also mentioned above¹⁸², the scope and activities of IOs broadened during those years. Taking into consideration the development cooperation context and more specifically the example of the World Bank, it emerges that this financial institution further expanded its range of operations beyond the merely financing of infrastructures' projects and programmes. Indeed, by means of two essential tools, that is SAPs before and SALs after, the World Bank began to include also some advisory services. Basically, conditions were imposed on its loans, with the aim of improving the governance of recipient countries' societies. On the other hand, the rise of new concerns about the environmental and social implications of key decision-makers' actions and the necessity to comply with the evolution of human rights law contributed to charge power-wielder actors with further responsibilities¹⁸³.

¹⁷⁷ Daniel D. Bradlow, *Private Complainants and International Organizations: A Comparative Study of the Independent Inspection Mechanisms in International Financial Institutions*, Georgetown Journal of International Law, Vol.36, 2005, p.405-406.

¹⁷⁸ *Ibid.*

¹⁷⁹ *Ibid.* and ILA, Final Report Berlin 2004. *op. cit.*, p.5.

¹⁸⁰ *Ibid.*

¹⁸¹ Bradlow, *op. cit.*, p.407.

¹⁸² See paragraph b. *A context constantly evolving*, pp.22-23.

¹⁸³ Bradlow, *op. cit.*, p.407.

Given the increased number of global governance actors and the innovative mechanisms they have developed to hold IOs accountable, a multi-layered and at times chaotic system of accountability relationships comes to light. Maybe, it results more useful to conceive accountability as a set of concentric circles: the inner one representing the responsibility and liability of IOs, the intermediate one, instead, concerning their legal accountability and finally, an outer circle standing for non-legal forms of accountability¹⁸⁴. This particular configuration can help to easily recognize the different kind of relationships taking place between IOs and the actors entitled to hold them accountable.

As stated above, IOs have to deal with different actors at the very same time and hence, with different constituencies. Therefore, it is not always clear to whom they have to be accountable in last instance. In order to clarify this issue, ILA has formulated a definition based on the three 'interrelated and mutually supportive'¹⁸⁵ levels of accountability.

The first level defines accountability as:

*'the extent to which international Organisations, in the fulfilment 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'*¹⁸⁶.

According to the second level accountability is interpreted as:

*'tortious 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)'*¹⁸⁷.

Then, in the third and final level accountability is described as:

*'responsibility arising out of acts or omissions which do constitute a breach of a rule of international and/or institutional law (e.g. violations of human rights or humanitarian law, breach of contract, gross negligence, or as far as institutional law is concerned acts of organs which are ultra vires or violate the law of employment relations)'*¹⁸⁸.

According to this definition, it emerges that procedural and substantial limitations on IOs authority and power derive mainly from two sources¹⁸⁹:

- primary rules of international and domestic law;

¹⁸⁴ Kurtin and Nollkaemper, *op. cit.*, p.16.

¹⁸⁵ ILA Final Report Berlin, 2004, *op. cit.*, p.5.

¹⁸⁶ *Ibid.*

¹⁸⁷ *Ibid.*

¹⁸⁸ *Ibid.*

¹⁸⁹ *Ibid.*, p.6.

- rules of the IOs, such as constituent instruments, decisions and resolutions adopted in accordance with them and established practices of the international organization, including oversight mechanisms (reporting, financial and administrative control, judicial review).

These three levels of accountability entail also different models of review¹⁹⁰:

- the second and the third level involve ‘decentralized’ models of judicial review;
- the first level, instead, implies ‘centralized’ models of mainly non-judicial review.

The focus of this dissertation is notably on centralized review mechanisms implemented by multilateral development agencies and specifically by the World Bank and the European Union. In order to facilitate the subsequent identification of these mechanisms, as they have been implemented by these two international organizations, it is now useful to delineate their general features.

g. Centralized mechanisms of general and individual oversight

The concept of ‘oversight’, in relation to international institutions, can be interpreted as a synonym for the accountability of IOs¹⁹¹. Taking into consideration the first level of accountability, as defined by ILA, centralized mechanisms of oversight of an international institution can be defined as those procedures that have been generated from within the organization.

Concerning this particular category, a first division can be made between ‘prospective’ and ‘retrospective’ accountability¹⁹². The first connotation basically refers to those non-judicial procedures favoring participation and transparency in decision-making processes as effective means for IOs’ oversight¹⁹³. Instead, the second meaning involve all those oversight measures implemented by an international organization in order to give account of its conduct ex post facto, such as reporting requirements or non-judicial complaints procedure.

These specific features of accountability, that is participation, transparency, appropriate reporting and evaluation mechanisms are all fundamental elements of good governance or good administration aiming at achieving the effective accountability of IOs¹⁹⁴. From these same principles, and objectives, ILA has derived a series of specific rules and guidelines labeled Recommended Rules and Practices (RRPs), with the aim of definitively setting the essential features an accountable IO should possess. Anyway, RRP do not constitute legal obligations but rather reflect extensive practice¹⁹⁵, as in the case of ‘access to information’¹⁹⁶ and of ‘non-judicial remedial action against IOs’¹⁹⁷.

¹⁹⁰ Erika De Wet, *Holding International Institutions Accountable: The Complementary Role of Non-Judicial Oversight Mechanisms and Judicial Review*, in ‘The Exercise of Public Authority by International Institutions’, vol.210, 2009, pp. 855-882.

¹⁹¹ *Ibid.*, p.855.

¹⁹² *Ibid.*, p.859.

¹⁹³ *Ibid.*, p. 860.

¹⁹⁴ ILA, Final Report Berlin, 2004, *op. cit.*, pp.6-7.

¹⁹⁵ *Ibid.*, p.8.

¹⁹⁶ *Ibid.*, p.9.

¹⁹⁷ *Ibid.*, pp.45-46.

Concerning the centralized oversight mechanisms that can be implemented by an IO, these fundamentally divide into two main categories depending on their general or individual nature. The first type includes all essentially non-judicial procedures that are not characterized by individual complaints' proceedings. Some centralized non-judicial oversight procedures are specifically directed to civil society. Instead, the second category involves precisely both judicial and non-judicial individual complaints procedures¹⁹⁸. However, this dissertation mainly deals with non-judicial procedures.

Taking into consideration general oversight measures, they can assume potentially complementing forms as they can be vertical, horizontal or diagonal¹⁹⁹. Vertical oversight is based on a hierarchical relation between parent organs exercising a supervision over a subsidiary organ and usually involves member-states as principal actors. Horizontal oversight, instead, allow NGOs or other member of the civil society to investigate over the normative activity of an international organization. This particular form of accountability is usually adopted through a formal mention in the constitutive document of the institution or through a formal decision, otherwise it can be also established on a voluntary basis. An example of horizontal oversight consists in the disclosure policies adopted by the World Bank. However, this particular measures of public scrutiny are usually limited to public outcry or peer pressure as possibilities of sanction. Finally, diagonal or intermediary oversight is generally exercised by an independent body, not having a direct relationship with the body being supervised. It is formally based on the constitutive document of an organization or in its subsequent resolutions adopted in accordance with it. Generally, it is interpreted as an accountability measure working in the shadow of a hierarchy relation.

Concerning centralized individual oversight, the most eminent example of non-judicial complaint procedure is represented by the World Bank's Inspection Panel. Inspection panels as well as ombudsman offices exercise an internal and independent control over the actions of a given IO, assuring its compliance with internal regulations and procedures and promote individual complainants' initiatives in holding the institution accountable. However, they cannot deliver enforceable decisions against the IO considered nor they can generally provide compensations for affected individuals²⁰⁰. Nonetheless, the existence of these non-legal remedies inside IOs is vital, as they represent useful instruments enabling non-state parties to protect their individual interests. Indeed, usually non-state claimants are prevented from advancing a remedial action against IOs, mainly because of their jurisdictional immunity before domestic courts²⁰¹. Nevertheless, this inherent imbalance of power between individual claimants and IOs can be reduced through the institution of alternative forms of remedial protection. Moreover, these mechanisms are particularly suitable for the level and form of accountability necessary to protect the rights and needs of a different category of claimants, notably that of non-state requesters. As a matter of fact, accountability claims against IOs are usually generated by different kind of constituencies, hence it is impossible to find a unique accountability mechanism able to serve this variety²⁰².

¹⁹⁸ De Wet, *op. cit.*, p.862.

¹⁹⁹ *Ibid.*, pp.863-868.

²⁰⁰ *Ibid.*, pp.868-869.

²⁰¹ ILA, Final Report Berlin 2004, *op. cit.*, p.41 and Schmalenbach, *op. cit.*, p.179.

²⁰² *Ibid.*, p.45.

Centralized mechanisms of general and individual non-judicial oversight are the focus of this dissertation. In the next section, their implementation will be examined in two different international organizations: the World Bank and the European Union. However, before continuing with this analysis, it is necessary to briefly delineate the profile of these two institutions.

h. Concerning the World Bank and the European Union

The World Bank and the European Union can be both defined as international donors, even if they operate at different levels. The World Bank is essentially a global governance institution, while the European Union mainly exercises its governance authority at a regional level. Nevertheless, they both involve and are held accountable by different constituencies at the same time, with member states on the frontline having a strong influence on their respective development policies²⁰³. This broad circle of potential addresses is a direct consequence of the extensive and ‘comprehensive’ notion of accountability²⁰⁴, as already described in the previous paragraph. It is also thanks to the competing action of these various constituencies that both institutions underwent major changes over the last decades, concerning their mandates as well as their organizational structures. These reforms involved, among other aspects, the implementation of transparency and accountability measures focusing on external actors and in particular on individual complainants. Dictated by a wave of widespread criticism and dissatisfaction, these innovations originated from a scarce level of effectiveness, credibility and legitimacy suffered by all major public institutions mainly from 1990s onward, in a global governance context, encompassing also the development-aid system.

The purpose of this dissertation is precisely to highlight what kind of possibilities these accountability mechanisms can offer, at least from a theoretical point of view, to the action of external actors and specifically of affected non-state actors toward international donors as the World Bank and the EU. The limits of these measures will be stressed as well, in order to give an overview as more satisfying as possible. However, before carrying on with an in-depth examination of the World Bank’s and the European Union’s centralized oversight mechanisms, it is necessary to underline what are the distinctive features of these two international donors and how they can eventually influence the approach toward development cooperation action of both organizations.

²⁰³ Dann, 2013, *op. cit.*, p.195.

²⁰⁴ See Kirsten Schmalenbach, *Accountability: Who is judging the European Development Cooperation?*, The Law of EU Development Cooperation, (Entwicklungszusammenarbeit im Recht der Europäischen Union), S. Bartelt, P. Dann, eds., pp. 162-190, *Europarecht-Beiheft*, February, 2008, p.163.

The main difference concerns the nature of each institution. As a matter of fact, the World Bank represents a specific type of international organization, specialized in the delivery of loans and grants for development purposes. Established in 1946, it represents the first worldwide example of development bank and it is still considered a model of reference²⁰⁵. It possess a specific mandate and a distinctive funding and voting system, mainly shaped on a corporate model. Moreover, it presents an almost universal membership, made up of both donor and recipient states. However, the representation of its member states is not equally balanced nor they are all subjected to the same rules²⁰⁶. As a matter of fact, World Bank's 'skewed voting structures' and 'weak democratic credentials'²⁰⁷ are perceived as an obstacle for the evolution of the Bank's governance toward more international legitimacy and political support²⁰⁸.

The European Union, instead, is a unique example of international organization based on three main features. First of all, it does not present a mixed membership, as in the case of the World Bank, rather almost all of its member states are themselves donors²⁰⁹. Secondly, European development policy and administration are essentially split into two distinct orientations, even if in principle EDC instruments aim at generally assisting developing countries in their entirety²¹⁰. On the one hand, European cooperation is regionally focused in addressing mainly former colonies, who have been subsequently gathered under the denomination of ACP countries. On the other hand, European development policy is more globally oriented toward the remaining developing countries²¹¹. Finally, development cooperation represents only a small sector within the EU 'portfolio' and hence, it is usually exposed to sector-based competition²¹². However, the EU has always claimed that this particular feature can represent an added value and a real advantage in the competition with other international donors. Its unique ability to deploy a different number and typology of policies at the same time should leverage its aid effort and multiplying their whole impact. Nevertheless, it is still unclear if this intentions are then concretely and coherently implemented through an effective development action²¹³.

The characteristics briefly outlined in this paragraph are at the base of both institutions' organization and legal structure and they influence their respective approaches to development cooperation policy. On the one hand, the 'autonomous-technocratic'²¹⁴ character of the World Bank, politically independent, strongly specialized and financially focused. On the other hand, the 'diplomatic-heteronomous'²¹⁵ model of the European Union marked by the will of serving different and ideally, complementary goals at the same time, than the simple fight against poverty, especially through the use of its diplomatic means.

²⁰⁵ Dann, 2013, *op. cit.*, pp.174-175.

²⁰⁶ *Ibid.*, p.198-199.

²⁰⁷ Rogerson, *op. cit.*, p.25.

²⁰⁸ See also Alnoor Ebrahim, *Improving Accountability at the World Bank*, Harvard Business School, Research & Ideas, 2009, available at: <http://hbswk.hbs.edu/item/improving-accountability-at-the-world-bank>

²⁰⁹ Dann, 2013, *op. cit.*, p.184.

²¹⁰ Schmalenbach, *op. cit.*, p.164-165.

²¹¹ *Ibid.*, and Dann, 2013, *op. cit.*, p.184-185.

²¹² Dann, 2013, *op. cit.*, pp.185.

²¹³ Rogerson, *op. cit.*, pp.27-28.

²¹⁴ Dann, 2013, *op. cit.*, pp.214-215.

²¹⁵ *Ibid.*, pp.215-216.

Therefore, at each organization basically corresponds a distinct approach, a different set of strategies to implement their respective development cooperation policies. In the next section, the main multilateral development agencies of these two organizations will be taken into consideration: the World Bank's IBRD and IDA and the European Commission. What kind of accountability mechanisms have been established in these two IOs in order to favor transparency and individual remedies? Which organization seems to be more responsive to affected individuals' needs, at least from a theoretical point of view?

4. The World Bank Group

i. From financial institution to development agency

The World Bank's experience in development cooperation began with the institution of the IDA in 1960. Indeed, until that moment the Bank's action had mainly passed through the decisional and organizational structure of the IBRD, which was established in 1946 with slightly different purposes and objectives than those of the ensuing development-focused institution. Nevertheless, in both organizations are embodied three salient features, reflecting the image and the role assumed by the World Bank along the years in the development aid system. These aspects basically relate to the independent, neutral and technical nature of the World Bank mission and administration, as it can be deduced from the respective Articles of Agreements²¹⁶ of the IBRD and the IDA. However, along the years, the Bank has undergone an 'informal' expansion of its objectives, priorities and operational measures, which did not seem always respectful of these first fundamental principles.

Origins and fundamental approach to development cooperation

The IBRD was founded in 1946, right after WWII. A completely ravaged Europe had emerged from this major conflict and all European states were in a desperate need for capitals and investments in order to start their reconstruction.

From the beginning, the IBRD was conceived as an independent institution able to win the trust of the financial market²¹⁷. Two structural solutions were adopted in order to guarantee its autonomy. First of all, a 'weighted voting system'²¹⁸ was established in order to prevent any political obstacle or stasis in the activity of the institution and thus, a dominant role for the wealthiest countries was ensured. Secondly, the influence of member states on Bank's business was limited by the fact that daily operations have been financed from the beginning, with the incomes of the bonds issued by the Bank on financial markets. This aspect has always guaranteed the Bank a certain degree of decisional independence, since it forced the staff to pay more attention to the creditworthiness of the projects and loans²¹⁹ at the expense of projects' and programmes' quality and of a greater alignment to recipient countries' real needs.

Along with the importance of independent action, another essential guiding principle of the Bank assumes that:

²¹⁶ See International Bank for Reconstruction and Development, *Articles of Agreement*, 2012, available at: http://siteresources.worldbank.org/BODINT/Resources/278027-1215526322295/IBRDArticlesOfAgreement_English.pdf and International Development Association, *Articles of Agreement*, 1960, available at: <http://siteresources.worldbank.org/BODINT/Resources/278027-1215526322295/IDAArticlesofAgreementEnglish.pdf>

²¹⁷ Dann, 2013, *op. cit.*, pp.51-52.

²¹⁸ *Ibid.*, p.199.

²¹⁹ *Ibid.*, p.52.

*'The Bank 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 [...].'*²²⁰

According to this assumption, the primary focus of Bank's decisions and actions should involve only the economic aspects of a given issue and should never deal with political considerations. Moreover, political interferences in the domestic affairs of member countries are banned. The Bank has generally been committed to these essential value, even if not always with the same initial emphasis. Indeed, the attitude of this financial institution toward recipient countries has changed a lot over the years.

A major interest of the Bank for developing countries arose right after the success achieved by the Marshall Plan. Indeed, the emergence of the Cold War confrontation and the contemporary wave of decolonization had contributed to change the international and political order of the time. The incredible number of new emerging states represented a new challenge for the World Bank, interested in integrating also these countries in the international economic system²²¹. Thus, a new independent organization was established, with an exclusive focus on developing countries and as primary mission to:

*'[...] promote economic development, increase and thus raise standards of living in the less-developed areas of the world [...].'*²²²

The institution of the IDA represented the first serious Bank's approach toward development cooperation strategy. Since developing countries were in need of substantial capital injections at affordable interest rates, the operations of the newly established agency could not only be sustained by bonds' incomes, as in the case of the IBRD. Hence, in 1960, member states agreed upon guaranteeing a regular replenishment of IDA's funds. In this way, the Bank could finally deliver ODA to its member countries.

However, the decisive shift of the World Bank from a merely financial institution engaged in a general 'poverty reduction' mission to a worldwide leading development organization occurred during McNamara's presidency in the 1970s²²³. In those years, the vision and areas of activities of the Bank increasingly broadened firstly in favour of the Basic Need Strategy, always in full compliance with the principle of developing countries' autonomy. However, already toward the end of McNamara leadership and in conjunction with a mounting interest in neoclassical theories, a redefinition of the Bank's aid delivery measures took place. These new means, involving 'short-term policy financing', imposed conditions on recipient countries, in order to guarantee the achievement of specific goals mainly related to 'balance-of-payment deficit'²²⁴. Underlining the economic nature of these new measures, the Bank tried to justify SAPs and SALs implementation, even if they represented a first interference in developing countries' sovereignty.

²²⁰ IBRD, *op. cit.*, Article IV Section 10. and IDA, *op. cit.*, Article V, Section 6.

²²¹ Dann, 2013, *op. cit.*, pp.54-55.

²²² IDA, *op. cit.*, Article I.

²²³ Dann, 2013, *op. cit.*, pp.82-85.

²²⁴ *Ibid.*, pp.105-106.

The situation even worsened when a decade later, exactly after the end of the Cold War, the concept of ‘governance’ was developed and adopted by the World Bank. The notion referred to a new set of development strategies and objectives precisely conceived to solve the problem of ‘fragile statehood’ in recipient countries²²⁵. According to this new approach, developing countries need to fulfil basic state functions in order to attain positive economic effects. Hence, the implementation of technical governance measures represented an efficient solution to this pressing issues, at least from the Bank’s point of view.

Even if the Bank has always maintained a ‘technical’ and essentially economic approach toward its development cooperation strategy, the domestic independence of recipient countries has been nonetheless eroded by a gradual expansion of the Bank’s mandate along the years. This evolution in the scope and meaning of the Bank’s mission coincided with a worldwide diffusion of human rights, environmental and societal concerns. Both these trends entailed a necessary reconfiguration of the Bank’s role in the current global governance context and a subsequent critical assessment of its real legitimacy.

Criticism and reforms

Already in the early 1980s, civil society organizations undertook important initiatives aiming at influencing internal Bank procedures both at a project and policy level, in order to guarantee greater participation for non-state actors in the Bank’s decision-making processes. At the origin of this widespread and growing criticism toward the World Bank’s governance model, there were the emergence of three interrelated and important elements.

First of all, as already underlined above, the official mandate of the Bank has greatly expanded over the years along with a further extension and transformation of its activities. The principle of no interference in member governments’ sovereignty succeeded in limiting the Bank’s range of action for the first twenty years. However, already to the end of 1970s, the conception and the later implementation of conditional aid, as future cornerstone of the Bank’s development cooperation strategy triggered a slow erosion in developing countries’ policy-making independence. This new wide-ranging Bank’s approach to development cooperation resulted in a broader set of policies, people, groups and organizations affected within the recipient countries’ boundaries²²⁶. However, the World Bank’s structure and internal organization had been primarily conceived for a narrower and more clearly designed set of technical issues, not for such far-reaching activities²²⁷. It derives that the influence of the Bank’s governance has tremendously extended over the last decades, but not its level of guaranteed accountability toward new relevant stakeholders.

²²⁵ *Ibid.*, pp.99-100 and pp.127-129.

²²⁶ See Ngaire Woods, *Making the IMF and the World Bank more Accountable*, International Affairs, 77: 83–100, 2001, pp.88-89.

²²⁷ *Ibid.*

A second element is related to the worldwide proliferation of democratic regimes over the past several decades. Indeed, democratic governance has already become an ‘uncontested benchmark’ of political legitimacy and along with state sovereignty, a guiding principle of global governance²²⁸. As a consequence, the decisions and the actions implemented by global governance institutions are no more passively accepted by civil society, but rather increasingly contested and informed at the same time. According to this evolving global trend, the World Bank has slowly started to recognize the benefits deriving from more inclusive and democratic decision-making processes, such as positive correlations between public participation and the overall quality of its projects²²⁹. As already stated above, in the previous chapter, one of the inherent problems of multilateral aid agencies precisely consists in a broken feedback loop between public authorities and the affected people. Hence, the adoption of these new mechanisms could partially re-establish a complete information flow in development institutions, improving their efficiency and their legitimacy at the same time.

A last and third important element is represented by the substantial growth in engagement of non-state actors in global politics²³⁰. Indeed, over the last decades, civil society organizations have acquired more power and recognition and they now carry out essential tasks of compliance-monitoring, agenda-setting and international organizations’ enforcement by naming and shaming, in an attempt at directly influencing global governance institutions. In many cases, they also provide technical expertise to third parties, for example to affected individuals in developing countries, when these actors need to address multilateral development agencies, such as the World Bank²³¹.

The interaction of these three elements: a multidimensional understanding of development no more limited to the sole goal of poverty reduction, the proliferation of democratic governance and finally, the growing influential action of non-state actors, has contributed to trigger a major wave of criticism against global governance institution and in particular against the WB’s governance model. Eventually, they forced this organization to reconsider its role in global development cooperation .

These efforts do not prove to be completely useless, since the Bank seemed relatively responsive to these calls for greater participation and accountability. Indeed, since then the WB has started to recognize a wider range of stakeholders in its work and it has also undertaken several reforms to enhance its accountability toward these new actors, including also more openness and transparency and the adoption of horizontal accountability mechanisms²³².

Already in the 1980s, the Bank adopted a first policy on access to information, which has since been reformed three times in the following years²³³. Then, in 1993, the establishment of an Independent Accountability Mechanism (IAM), embodied in the Bank’s Inspection Panel marked another important shift toward a more democratic dimension of the WB’s accountability.

²²⁸ See S. Herz and A. Ebrahim, *A Call for Participatory Decision-Making: Discussion Paper on World Bank-Civil Society Engagement*, World Bank-Civil Society JFC, 2005, pp.18-19.

²²⁹ *Ibid.*, p.20.

²³⁰ Hale and Held, *op. cit.*, pp.8-10.

²³¹ *Ibid.*

²³² Woods, 2001, *op. cit.*, p.90.

²³³ Dann, 2013, *op. cit.*, pp.471-473.

j. Coping with transparency and accountability claims

Transparency has always been a critical feature for Multilateral Development Banks (MDBs). Indeed, until 1990s the banker-client relationship was mainly grounded on privacy rights²³⁴. However, MDBs' confidentiality has begun to be confronted by the spreading of more transparent procedures' expectations, when clients' countries finally assumed the role of 'partners'²³⁵, in a general reconfiguration of international donors-recipient relationships, which coincided with the end of the Cold War confrontation. Nowadays, transparency is mainly associated to the principle of good governance, because it is assumed that more transparent information can enhance the participation of different stakeholders in decision-making processes, hence improving also the effectiveness of development projects, as different inputs and views are taken into consideration in this way. In this framework, MDBs' implemented transparency measures toward citizens of member countries can both work as 'corrective action' to closed national systems and above all, enhance the 'right to recourse' of affected individuals²³⁶.

Transparency is a multidimensional topic including different features, such as the right of access, automatic disclosure, the right to request information, the promotion of freedom of information etc²³⁷. The ILA understands both transparency and access to information as important elements of the principle of good governance, even if they fundamentally represents two distinct features²³⁸. For the purpose of this dissertation the definition of 'access to information'²³⁹ is the most relevant one, implying the adoption of horizontal mechanisms of general oversight, that is disclosure policies.

The adoption of information strategies is a fundamental factor in a development cooperation context, since they improve effective and informed stakeholders' participation and thus, they enhance also the accountability of decision-makers²⁴⁰. As stated in the World Bank's Access to Information Policy:

'[...] Transparency is essential to building and maintaining public dialogue and increasing public awareness about the Bank's development role and mission. It is also critical for enhancing good governance, accountability, and development effectiveness. Openness promotes engagement with stakeholders, which, in turn, improves the design and implementation of projects and policies, and strengthen development outcomes.[...]'²⁴¹

²³⁴ See P.J. Nelson, *Transparency and accountability at the Multilateral Development Banks*, World Development, 29: 1835-1847, 2001, p. 1836.

²³⁵ *Ibid.*

²³⁶ *Ibid.*, p.1837.

²³⁷ See GTI, *Assessing the World Bank Openness: A Transparency Scorecard*, 2006, pp.2-5, available at: <http://www.bankinformationcenter.org/wp-content/uploads/2013/01/WBG+Transparency+Scorecard.pdf>

²³⁸ ILA, Final Report Berlin 2004, *op. cit.*, pp.8-10.

²³⁹ *Ibid.*, p.9.

²⁴⁰ ILA, Final Report Berlin 2004, *op. cit.*, p.9 and GTI, *op. cit.*, p.2.

²⁴¹ See World Bank. 2010. *The World Bank policy on access to information*. Washington, DC: World Bank, I.1.

However, in certain instances, transparency of selected data can distort both decision-making processes or perceptions of it²⁴².

In order to assess the effective practice of transparency, four features of disclosure policies can be considered as valuable indicators: the fullness of disclosure, the accessibility, the timeliness and an eventual recourse²⁴³. The fullness of disclosure generally ranges from a mandatory released of all documents available, to more voluntary forms of discretionary disclosure and usually entails several obstacles²⁴⁴. As a matter of fact, key documents are at times released in summary forms, while some categories of information are often considered as not to be released²⁴⁵.

Concerning the accessibility feature, it generally refers to the sites where information can be found, the language in which it is released and also the cost. In theory, an effective disclosure policy should imply free-of-charge information available in every sites and in as many languages as possible²⁴⁶.

Finally, timeliness requires documents to be available before Board's vote or immediately after²⁴⁷. However, in the first instance, greater public participation and democratic accountability forms are enhanced by this transparency feature.

Disclosure policies in MDBs firstly originated in the World Bank. Already during 1970s and 1980s, the Bank received pressures from several member governments and NGOs, given the environmental and human rights implications of its projects. However, the Bank proved to be relatively responsive to these first transparency claims and indeed, during the 1980s the Bank approved the 'Directive on disclosure of information'²⁴⁸. Through this first procedure the Bank assumed a general principle of disclosure, in the absence of compelling reasons not to disclose a given information. Moreover, it divided documents into three categories: those published, the ones available to specific audiences and the restricted ones. The directive basically contained a 'positive list' of information that could be disclosed and it further specified eventual restrictions.

In 1993, 2002 and 2005 this initial disclosure policy underwent major shifts and a progressive expansion of the categories of documents publicly available²⁴⁹. Initially, the focus was mainly on Environmental Datasheet and Assessments, given also that the first pressures to the Bank mainly arose from its projects' implications in this same field. Then, further expansions involved Program Documents, certain evaluations by the Operations Evaluations Department (now IEG-WB), Executive Directors' Work Program etc. A Public Information Centre was established, enabling the subsequent creation of a network to easily disseminate information through Bank's country offices. Finally a further expansion of available documents included also Board minutes, operational policy and strategy papers. However, with the entering into force of the last version of WB's disclosure policy, the 'positive list' system of documents was no more available and in its place clearance procedures were adopted to enable the disclosure of information.

²⁴² Woods, 2001, *op. cit.*, pp.90-91.

²⁴³ The World Bank's recourse mechanism, the Inspection Panel, will be analyzed in the next paragraph.

²⁴⁴ Nelson, *op. cit.*, p.1838.

²⁴⁵ *Ibid.*

²⁴⁶ *Ibid.*

²⁴⁷ *Ibid.*

²⁴⁸ See The World Bank Operations Policy and Country Services, *Toward Greater Transparency through Access to Information. The World Bank's Disclosure Policy*, 2009, p.27.

²⁴⁹ *Ibid.*

Subsequently to the adoption of this last policy version, the Global Transparency Initiative (GTI)²⁵⁰ assessed the openness level of the World Bank's disclosure standards, evaluated against a series of criteria, from the right of access to the right to request information, etc.²⁵¹. It emerged that the Bank's complex and mainly 'regulatory approach'²⁵² to disclosure prevented this institution from establishing a more open and efficient system, allowing a fully realization of the public's right to know. Moreover, the GTI's assessment highlighted the need for a paradigm shift 'moving away from interpreting disclosure as a limited set of procedural obligations to more fully embracing transparency in all of its operations'²⁵³.

The last comprehensive reform of the World Bank's disclosure policy occurred in 2010. The new Access to Information Policy is based on the principle that all documents are now generally available to the public, unless they are subject to an explicit exception:

*'The Bank allows access to any information in its possession that is not on a list of exceptions.'*²⁵⁴

Hence, the 'positive list' approach of the first disclosure policy's versions has been definitely replaced by a 'negative list'²⁵⁵.

Moreover, the new policy has introduced also an enforcement mechanism, the Access to Information Committee (AI Committee), involving the possibility to appeal to an independent panel of external experts, when a request for the disclosure of particular documents is denied by the Bank²⁵⁶. This innovation entails a proactive dissemination of relevant documents, since it enables civil-society organizations to uncover the information needed and hence, it increases the public scrutiny of the Bank²⁵⁷.

However, this new policy still presents some gaps and limitations in order to guarantee a full achievement of effective transparency²⁵⁸. For example, concerning the two-staged appeal mechanism for denied requests, the independent appeals function is limited in scope and hence, it is difficult to access appeals process²⁵⁹. Nevertheless, the new policy constitutes an improved version of previous declarations on disclosure and proves to be more aligned with the claims for more transparent and open global governance institutions.

In the next paragraph another essential World Bank's accountability mechanism will be presented, notably the Inspection Panel.

²⁵⁰ A network of civil society organizations promoting openness at public international bodies and who has developed a Transparency Charter for International Financial Institutions

²⁵¹ GTI, *op. cit.*, pp.7-14.

²⁵² *Ibid.*, p.2.

²⁵³ *Ibid.*

²⁵⁴ World Bank, 2010, *op. cit.*, II.6.

²⁵⁵ See Bruce Jenkins, *The World Bank's New Access to Information Policy*, IFI Info Brief, 2010, p.4.

²⁵⁶ World Bank, 2010, *op. cit.*, IV.F.

²⁵⁷ Jenkins, *op. cit.*, pp.12-13.

²⁵⁸ *Ibid.*, p.2

²⁵⁹ *Ibid.*

k. The World Bank's Inspection Panel

The establishment of the Inspection Panel can be traced back to the 1990s, a period characterized by strong criticism and civil society's activism against the environmental and human rights implications of the World Bank's projects. Precisely during 1990s, several member states as well as NGOs advocated for structural and institutional changes in the WB's administration, aiming at greater transparency and accountability measures for affected citizens.

Two episodes pushed the Bank to finally produce a proposal for the establishment of an inspection panel inside the organization²⁶⁰. The first one is related to the review of the controversial Sardar Sarovar Dam project, in India, which had dramatic consequences for the local population and the environment. The second one refers to the threats made by a Congressional committee of withholding US funds for the IDA until new policies were in place²⁶¹. As a matter of fact, in those occasions, it became clear that the Bank's management was essentially guided by a 'culture of approval' in its procedures and decisions concerning the aid allocation. Specifically, Bank's staff aimed at increasing the quantity of loans and grants, disregarding the quality of the projects, the level of borrower commitment or the right application of Bank policy²⁶². Accordingly, the Bank decided to accept some limited and defined form of direct responsibility to individuals affected by the implementation of its projects²⁶³ and hence, in 1993, it finally established the Inspection Panel with a Resolution of the WB's Board of Executive Directors²⁶⁴.

Before passing in review the structure and the functioning process of the Panel, as expressed in the first Resolution of 1993 and in the subsequent 1996, 1999 and 2014 reviews and updating procedures, it is useful to clarify what is the necessity for such a non-judicial oversight mechanism and what are the general principles that should guide its institution and its consequent implementation.

As already stated before, the necessity of centralized inspection mechanism is imposed by the existence of a general principle of good governance, which satisfies the need for affected individuals to hold power-wielders accountable. The absence of investigative mechanisms exclude from the beginning any chances of correcting the negative consequences deriving from the flawed aspects of organizations actions or operations. On the contrary, when an inspection body is established, as in the case of the WB's Panel, the staff and management are more incentivized to pay closer attention to their activities, thus ensuring their compliance with the Bank's policies and procedures²⁶⁵. However, in order for an inspection mechanism to be completely efficient in carrying out its mission, several principles should be observed during its design and implementation.

²⁶⁰ Nelson, *op. cit.*, p.1839.

²⁶¹ *Ibid.*

²⁶² See Elena Mitzman, *The Proliferation of Independent Accountability Mechanisms in the Field of Development Finance*, Jean Monnet Working Paper 14/10, p.10.

²⁶³ Nelson, *op. cit.*, p.1837.

²⁶⁴ Board Resolution IBRD 93-10 and Board Resolution IDA n°93-6, Sept. 1993, available at: <http://ewebapps.worldbank.org/apps/ip/PanelMandateDocuments/Resolution1993.pdf>

²⁶⁵ Bradlow, *op. cit.*, pp.462-463.

First of all, the inspection body should have a clear and definite purpose. In the case of the IP's objective, this essentially concerns compliance review procedures, aiming at determining if the Bank's staff and management met the 'requirements of all the applicable procedures in the operation subject to review'²⁶⁶.

Another important feature is the user friendliness of the procedures, implying also clear and limited requirements to be satisfied by a given complainant for the eligibility of its request²⁶⁷. Then, the investigative body should be independent from the management of the organization and thus, it should directly report to the Board of External Directors²⁶⁸. Moreover, it should have access to all documents, persons, locations, records that it deems necessary to conduct a complete investigation²⁶⁹. Finally its recommendations, findings and conclusions should be supported by facts as well as sufficiently comprehensive and well-reasoned arguments in order for the investigative action to be declared impartial and fair²⁷⁰.

Taking into consideration the World Bank's Inspection Panel, its structure and functioning process are mainly articulated in the 1993 Resolution.

The Inspection Panel's structure (Artt.2-11)

The Panel is composed of 3 members, elected for a non-renewable period of 5 years by the Board of Executive Directors to whom they are also responsible. The candidates are nominated by the Bank's President after a consultation with the Executive Directors. They are subsequently elected on the basis of:

*'[...] their ability to deal thoroughly and fairly with the requests brought to them, their integrity and their independence from the Bank's management [...]'*²⁷¹

The independence of the Panel's members is established in paragraphs .5.-6.,8. Accordingly, members cannot have worked in any body of the Bank for the two years prior to their appointment²⁷² and they can only be removed from office 'for cause' by decision of the Executive Directors²⁷³. Finally, a member is barred from participating in any hearing or investigation relating to any matter in which he has a personal interest or a significant involvement²⁷⁴.

The Inspection Panel's process

The Panel's scope of scrutiny is limited to the Bank's internal rules and it is open to complaints of affected third parties and individuals.

According to paragraph 12. of the 1993 Regulation:

²⁶⁶ *Ibid.*, p.464.

²⁶⁷ *Ibid.*, p.465.

²⁶⁸ *Ibid.*, p.466.

²⁶⁹ *Ibid.*

²⁷⁰ *Ibid.*, pp.466-467.

²⁷¹ 1993 Resolution, para.4.

²⁷² *Ibid.*, para.5.

²⁷³ *Ibid.*, para.8.

²⁷⁴ *Ibid.*, para.6.

*'The Panel shall receive requests for inspection presented to it by an affected party in the territory of the borrower which is not a single individual [...], or by the local representative of such party or by another representative in the exceptional cases [...].'*²⁷⁵

Concerning the status of the 'affected party', the 1996 Review further clarifies that this includes 'any two or more persons who share common interests or concerns'²⁷⁶. This specification is maintained in the 2014 updated Operating Procedures²⁷⁷.

In order to access the Inspection Panel's process, the affected party must demonstrate that:

*'[...] its rights or interests have been or likely to be directly affected by an action or omission 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 [...].'*²⁷⁸

Hence, in all instances it must be proved that the Bank has failed in complying with its operational policies and procedures during one or more phases of the project's cycle and that the Bank's action or omission:

*'[...] has had, or threatens to have, a material adverse effect[...].'*²⁷⁹

Thus, alleged violations by the borrowing country, Bank procurement practices or projects which have been more than 95% completed cannot constitute the subject matter of a complaint²⁸⁰.

Once the request has been submitted to the Panel, it has to pass through two stages. Firstly, an eligibility stage and then an investigation stage. Before the eligibility step, the Panel has to verify that the subject matter of the request has been previously dealt with the management of the Bank, but that this one failed to follow or take adequate steps to deal with the issue raised in the request²⁸¹. Moreover, the Panel should establish that the alleged violation is of a serious character²⁸².

²⁷⁵ *Ibid.*, 12.

²⁷⁶ See 1996 Review of the Resolution, available at: <http://ewebapps.worldbank.org/apps/ip/PanelMandateDocuments/ReviewResolution1966.pdf>

²⁷⁷ See 2014 Updated Operating Procedures, available at: <http://ewebapps.worldbank.org/apps/ip/PanelMandateDocuments/2014%20Updated%20Operating%20Procedures.pdf>

²⁷⁸ 1993 Resolution, *op. cit.*, para.12.

²⁷⁹ *Ibid.*

²⁸⁰ *Ibid.*, para.14. and 2014 updated operational procedures, *op. cit.*, para.25.

²⁸¹ *Ibid.*, para.13.

²⁸² *Ibid.*

Originally, once the request was registered and the Bank management had submitted a response²⁸³ to the Panel within 21 days, the Panel could perform an initial eligibility review, assessing that all the basic criteria for the presentation of the request had been met. With the entering into force of the 1999 Clarification and of the subsequent 2014 Updated Operational Procedures, a list of six eligibility criteria has been included²⁸⁴. Moreover, from the 1999 Clarification onward, this technical eligibility can be confirmed by a field investigation conducted by the Panel in the borrowing country taken into consideration in the request²⁸⁵.

When the Panel has finally assessed the eligibility of the request, taking also into consideration the management response and all further useful information gathered during the field visit, it recommends an investigation to the Board of Directors²⁸⁶.

With the approval by the Board of the recommended investigation, the second stage of the Panel's work begins. An Investigation Team is put into place and all relevant information are analysed or required, following a specific plan, in order to compile an investigation report as more complete and impartial as possible²⁸⁷. Once the Panel has completed its investigation report, he submits it to the Board of Executive Directors and to the Bank staff, who has six weeks to prepare a reply. The Board then considers both the Panel's and the management's reports and must decide within two weeks whether to address the requesters' concerns or not. At due time, both reports are made publicly available.

The two-step Panel's procedures has been further split in four main phases, with the adoption of the 2014 Updated Operational Procedures (Figure 4).

Another important innovation introduced by this last version of the Panel's Regulation is represented by the Pilot approach²⁸⁸. The Pilot constitutes a 'constructive way to support early solutions in the Panel process'²⁸⁹, offering the opportunity to address and resolve requesters' concerns without immediately initiating a full-fledged Panel process. Hence, it involves actions prior to any registration of a request (temporarily postponed), if both the Bank's management and the requesters are interested in seeking opportunities for early solutions. This innovative procedure aims at improving the effectiveness and the efficiency of the Panel process both 'in favor' of the requesters and the institution.

The Pilot's action is usually oriented toward narrowly focused and less contentious issues, frequently received by the Panel. In any case, the approach supplements the registration procedures and after a period of three months, the Panel can express a decision on whether closing or registering the request²⁹⁰.

²⁸³ *Ibid.*, para. 18.

²⁸⁴ See *1999 Clarification of the second review*, available at: <http://ewebapps.worldbank.org/apps/ip/PanelMandateDocuments/ClarificationSecondReview.pdf>, para. 9. and 2014 updated operational procedures, *op. cit.*, para.39.

²⁸⁵ 1999 Clarification, para.7. and 2014 updated operational procedures, para.37.

²⁸⁶ 2014 updated operational procedures, *op. cit.*, para. 45.-48.

²⁸⁷ *Ibid.*, para.52.-57.

²⁸⁸ *Ibid.*, Annex 1

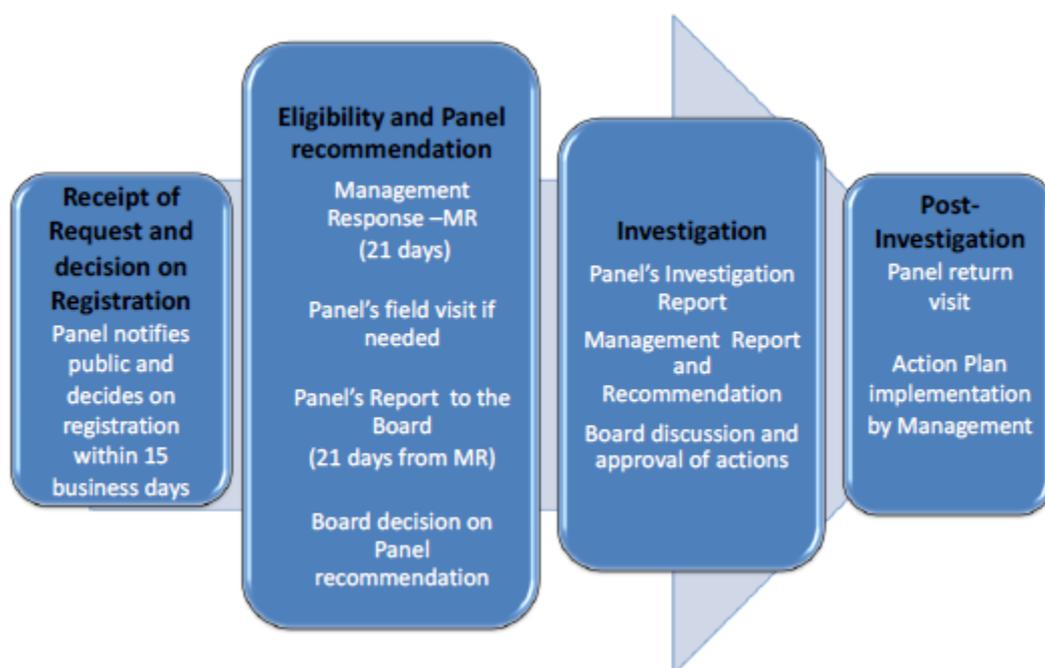
²⁸⁹ See *Inspection Panel Pilot approach*, 2013, available at: <http://ewebapps.worldbank.org/apps/ip/PanelMandateDocuments/PilotingNewApproach.pdf>

²⁹⁰ *Ibid.*, para.8.

As stated at the beginning of 2014 updated operational procedures, the Panel serves two important accountability functions. First of all, it provides a forum for people, especially the poor and vulnerable one, enhancing their recourse action against the Bank, thus promoting more inclusive and sustainable development. Then, it contributes also to the Bank’s institutional learning, helping also to improve the effectiveness of the Bank’s operations through an independent and impartial assessment of the claims it receives²⁹¹.

However, the recommendations issued by the Inspection Panel do not imply enforcement measures and thus, it is always uncertain the impact that such a non-judicial mechanism can have on the Bank’s decision-making process. Is it sufficient to trigger a behavioural change in the management, making in this way the Bank more responsive to its stakeholders needs?

Figure 4: The Inspection Panel process



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

²⁹¹ 2014 updated operational procedures, *op. cit.*, para.2.

5. The European Union

1. The road toward consensus and international compliance

The European experience in development cooperation can be traced back to the first years of the EEC and since then, it has always been characterized by the existence of a complex dual system. A duality primarily based on the coexistence of a multilateral and a bilateral cooperation system, the first one relying on the European Commission's leadership, while the second one encompasses all the independent initiatives of its member states. Secondly, this duality derives also from a constant tension between two contrasting tendencies concerning the geographical focus of European development cooperation: a regionalist trend versus a globalist one.

Hence, the evolution of European development cooperation has been marked by a continuous succession and affirmation of one trend on the other, at least until recently, when the adoption of the European Consensus on Development informally sanctioned a sort of legal integration between these two *raison d'être* of European development cooperation.

Origins and evolution of EDC: a strong bond with the ACP countries

The evolution of European development cooperation has been strongly marked since its inception, by a special link with former colonies, later formally gathered in the group of ACP countries²⁹². As matter of fact, up until the beginning of the 1980s, the EU-ACP relations represented the main focus of European development cooperation strategy. This unique relation originated early, in conjunction with the ratification of the Treaty of Rome, in 1957 and since then it has constantly evolved, reaching its apex with the approval of the Lomé Convention²⁹³, in 1975 and finally aligning to the contemporary general trend in development cooperation, with the adoption of the Cotonou Agreement, in 2000.

The first approach of EEC toward development cooperation was strongly influenced by the 'policy of association'²⁹⁴ adopted by France toward its colonies. Indeed, at the beginning, development did not represent a clearly defined concept or administrative practice in the European vision, but rather an appendix of trade policy²⁹⁵. As a matter of fact, through this 'policy of association' the colonies and the member states of the EEC mutually recognized a reciprocal economic relationships based on a primary access to their respective markets²⁹⁶.

Despite the fact that European development cooperation was still in its initial phase, two crucial features emerged precisely in this same period. First of all, through the Treaty of Rome an ad hoc external fund, the European Development Fund (EDF), was established by the member states of the EEC, in order to sustain the relationship with the 'associated' countries²⁹⁷. Secondly, the EDF marked the origin of a more coordinated European development action toward recipient countries, in addition to the already existing bilateral relationships of individual member states.

²⁹² See EuropeAid, *The European Union and Development Aid: a Longstanding Resolution*, p.1, available at: http://ec.europa.eu/europeaid/sites/devco/files/publication-factsheet-development-cooperation_en.pdf

²⁹³ See K. Arts and A.K. Dickson, *EU Development Cooperation: from Model to Symbol*, Manchester University Press, 2004, pp.1-2.

²⁹⁴ Dann, 2013, *op. cit.*, pp.58-60.

²⁹⁵ *Ibid.*, p.59.

²⁹⁶ *Ibid.*

²⁹⁷ *Ibid.*, p.59-61 and EuropeAid, *op. cit.*, p.1.

The subsequent adoption of the Yaoundé Convention, in 1964, allowed a further institutionalization of European development cooperation toward the recipient countries. In this same occasion, the previous unilateral structure of the EDF was renewed, given the new independent status acquired by several former colonies and at the same time, its funds were increased encompassing new investment sectors, like infrastructure projects²⁹⁸. However, during those years European development cooperation action was mainly oriented toward the expansion of the EEC's political prestige and visibility²⁹⁹.

The decisive step up in class of European development cooperation was marked by the approval of the Lomé Convention in 1975. First of all, twenty-one states were included, by distinction with the former nineteen 'associated' countries and all together formed the new ACP cooperation group³⁰⁰. Secondly, the Lomé Convention represented a crucial innovation compared to the more general development trend diffused in that period. Indeed, the agreement was essentially based on the principle of equality between partners and thus aimed at avoiding any form of neo-colonialism. At the same time, it offered to the ACP countries the possibility of contributing to a new international economic order³⁰¹. As a matter of fact, the Lomé Convention did embody some of the principals claims of the NIEO movement, such as non-conditional external support and the recognition of recipient countries' sovereignty in development matters within their national boundaries. Concretely, the Convention sustained a jointly administration of aid flows, granted on very favorable terms and above all, equally available to all countries and hence, non-political. Finally, the ACP were conferred the sole right to propose development projects³⁰².

Unfortunately, all these remarkable innovations did not last for a long time and in fact, they were gradually replaced by political conditionality, a strategy more in line with the global development trends of that period. Already during the 1980s, the World Bank's model of SAPs began spreading worldwide, basically modifying the development context in which also the EU operated³⁰³. The EU decided to adopt this new process of aid delivery, in an attempt at internationally affirming its role while, at the same time, contributing to the ongoing reform of the development aid system. However, the European approach would have distinguished itself for its flexibility and greater adaptability to the ACP countries' needs, compared to the more standardized and usually coercive nature of World Bank's conditions³⁰⁴. Nevertheless, the Commission was seriously prevented from adopting these innovative measures, primarily because of a lack of technical personnel and financial resources and above all, because several member states were in favor of a convergence with the dominant World Bank's approach. As in the case of the Bank's political lending, the final outcome was a deep interference in the domestic policies' domain of recipient states, marking an overthrowing from the basic principles on which the Lomé Convention had been agreed before.

²⁹⁸ Dann, 2013, *op. cit.*, p.61.

²⁹⁹ *Ibid.*, p.63.

³⁰⁰ *Ibid.*, p.90.

³⁰¹ *Ibid.*, p.91 and see Arts and Dickson, *op. cit.*, pp.18-19.

³⁰² *Ibid.*

³⁰³ Arts and Dickson, *op. cit.*, pp.20-22.

³⁰⁴ *Ibid.*

The implementation of political conditions in European aid delivery finally culminated in the adoption of sanctions against those countries who would have disrespected human rights, democracy or governance norms³⁰⁵.

Then, right after the end of the Cold War the EU entered a new phase of evaluation and reform, given the poor results met by its cooperation action over the last decades and the changes occurred in the global world order. Indeed, the disintegration of the Soviet Union triggered a refocus of EU's action toward the near eastern states as well as toward the Mediterranean region³⁰⁶. Therefore, the ACP countries finally lost their preeminence in the EU's development agenda.

In the late 1990s, the international development trend decisively oriented itself toward the overarching goal of poverty reduction³⁰⁷ and the establishment of the ownership principle, entailing developing countries primary role and responsibility in the implementation of development cooperation's projects and programmes³⁰⁸. Even in this occasion, the EU decided to adopt an adjustment strategy, opting for an alignment of its development cooperation policy with the general international trend.

Reforms, consensus and alignment with the international trend

Since 2000, the governance of the EU has undergone major changes concerning its development strategy and management. These reforms proved to be essential in order to enhance the credibility, the effectiveness and the legitimacy of EU's international role in aid delivery and its fundamental advocacy function in spreading basic principles, like democracy, human rights, social welfare and liberalism.

First of all, the ratification of the Cotonou Agreement in 2000 reinforced and finally formalized the shifts occurred during the previous Lomé Convention regime. Indeed, the last legal framework of EU-ACP cooperation reflects the purpose of combining a political, economical and development cooperation relationship with the main features of the actual development context, such as the MDGs' challenges, the implementation of aid effectiveness principles as well as the recognition of developing countries' ownership.

Secondly, the global cooperation strategy of EU focusing on non-ACP countries and previously split in three main regional sectors (one grouping Asia and Latin Americas countries, a second reuniting Mediterranean and Middle-East countries and a third oriented toward Eastern countries) has been reorganized under two main mechanisms: the European Neighbourhood and Partnership Instrument (ENPI) and the Development Cooperation Instrument (DCI). In particular, the DCI³⁰⁹ has become the relevant framework for the regulation of EU development cooperation relations with non-ACP states in Asia, Central Asia, South Africa and the Middle East.

³⁰⁵ *Ibid.*, p.9 and pp.27-28.

³⁰⁶ *Ibid.*, p.8 and EuropeAid, *op. cit.*, pp.1-2.

³⁰⁷ See for example World Bank, *World Development Report 2000/2001: Attacking Poverty*, available at: <https://openknowledge.worldbank.org/handle/10986/11856>

³⁰⁸ See DCI Regulation, 22nd recital and Cotonou Agreement, art.2. See also the Paris Declaration on Aid Effectiveness, Ownership, Harmonisation, Alignment, Results and Mutual Accountability, signed by the EU in 2005.

³⁰⁹ DCI, *Regulation (EC) No 1905/2006 of the European Parliament and of the Council establishing a financing instrument for development cooperation*, 2006, available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32006R1905>

Both the Cotonou Agreement and the DCI Regulation represent the main instruments of an improved European development cooperation in line with international principles of effective aid delivery, mutual accountability, ownership and results-based management. In this respect, the subsequent adoption of the ‘European Consensus’³¹⁰ in 2005 by the Council and the European Parliament constituted a major effort toward further coherence and harmonization within European development cooperation and a recognition of the common principles at the basis of both ACP and non-ACP countries’ regulations. The European Consensus is precisely a non-binding statement of the values, objectives, principles and means shared by both European member states and the Commission. A soft law instrument aiming at giving greater unanimity and hence, credibility to European development cooperation³¹¹.

A final outstanding innovation has been introduced in 2010, subsequently to the ratification of the Lisbon Treaty. With the entering into force of the new TEU, both the organization and the legal structure of European development cooperation underwent two important replacements, which completely rearranged the previous Commission-centric system.

Established on the complementary policy-making work of three different Directorate-Generals (DG): DG Development, DG for External Relations and DG for Humanitarian Assistance (ECHO) and on their integration with the technical and implementing Agency for Cooperation EuropeAid, the EC’s development cooperation action was a fragmented and burdensome system. A first restructuring concerned the merging of the DG Development with the technical agency EuropeAid. From their integration originated a unique DG for European development cooperation’s planning and implementation. The new-born DG DEVCO-EUROPEAID was then successively flanked by the functionally autonomous body of the European External Action Service (EEAS)³¹², which assimilated the former DG for External Relations. The establishment of the EEAS contributed also to a further confluence of the ACP and non-ACP country units, previously distinctively managed by the DG Development and the DG for External Relations and hence, to a major integration of these two distinct geographical tendencies of European development cooperation.

The dual system of European development cooperation seems to have finally resulted into a more coherent and harmonized organizational and legal framework. However, from this brief historical excursus, some specific features emerge.

First of all, the strongly political nature of European development cooperation. As a matter of fact, decisions taken within the Commission are always a product of political compromises, deriving from member states’ different needs and interests and successively reversed through the Council on the Commission administrative initiatives. Moreover, the regional governance of the EU and the preponderance of donor states as its main members entail a unilateral view and conception of development cooperation’s implementation primarily based on European political principles and values.

³¹⁰ *The European Consensus on Development 2006/C 46/01*: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ%3AC%3A2006%3A046%3A0001%3A0019%3AEN%3APDF>

³¹¹ Dann, 2013, *op. cit.*, pp.190-191.

³¹² See Council decision 2010/427/EU, *Establishing the organization and functioning of the European External Action Service*, available at: http://www.eeas.europa.eu/background/docs/eeas_decision_en.pdf

The once unique example of a more fair and equitable cooperation between donor and recipient countries, as that offered by the adoption of the first Lomé Convention appears now very distant. Moreover, over the years, the approach of the EU toward development cooperation has become more and more aligned with the global trend directly influenced by the World Bank's governance model. Indeed, apart from the meaningful example of the Lomé Convention, the EU seems to have recently assumed a more subordinate role in the global development aid system. This is possibly due to the fact that European development cooperation represents only a sector to be coherently implemented within the framework of an overarching European external action's policy. The multiple dimensions of European purposes contrast with the more technical and specialized nature of the World Bank's mission. This particular aspect, together with the regional configuration of the EU and its greater internal bond among supranational institutions, member states and European citizens, but a relative external weak one, may represent a greater obstacle for affected individuals in developing countries who want to hold the Commission accountable for the implementation of its development projects and programmes.

It is now useful to take into consideration the transparency and accountability mechanisms that the EU has made available to non-member states and individuals.

m. Transparency of European Development Cooperation

The transparency principle in EU has been implemented, since its inception, as a specific right of access to documents, 'unidirectional' and 'bottom-up'³¹³. Hence, its enjoyment requires citizens' action toward a given institution in order to attain the necessary information³¹⁴.

At first, this right constituted a corollary of the procedural right to be heard and to have access to a file. Then, the Treaty of Amsterdam set forth to a general right of public access to European Parliament, Council and Commission documents, included in Art. 255 TEC (now Art.15 TFEU). Finally, this right has been implemented by Regulation 1049/2001³¹⁵.

The transparency of EU development operations is primarily based on this general 'access to information regime'³¹⁶. Hence, Art. 15 TFEU declares that:

*'In order to promote good governance and ensure the participation of civil society, the Union institutions, bodies, offices and agencies shall conduct their work as openly as possible.'*³¹⁷

However, the subsequent para.3. guarantees the right of access to Union documents only for residents or citizens of the EU:

*'Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, shall have a right of access to documents of the Union institutions, bodies, offices and agencies, whatever their medium [...].'*³¹⁸

³¹³ See Alberto Alemanno, *Unpacking the Principle of Openness in EU Law. Transparency, Participation and Democracy*, HEC Paris Research Paper n°LAW-2013-1003, p.4.

³¹⁴ *Ibid.*

³¹⁵ *Ibid.*

³¹⁶ Dann, 2013, *op. cit.*, pp.483-484.

³¹⁷ TFEU, Art.15.1.

Through Regulation 1049/2001 the application of Art.15 TFEU is further clarified. At the beginning is stated that:

*'Openness enables citizens to participate more closely in decision-making process and guarantees that the administration enjoys greater legitimacy and is more effective and more accountable to the citizens in a democratic system.'*³¹⁹

As in the case of WB's disclosure policy, the openness' element is interpreted as an essential feature for the accountability of the organization, entailing the possibility of citizens to participate, to be engaged in decision-making processes. However, the WB's definition presents a slightly different hint than the EU's one. Indeed, from the Bank's perspective, greater public commitment directly leads to improvements in the design and the implementation of the projects, thus contributing to the effectiveness of the whole organization. From the EU's point of view, it do emerge that greater participation entails a more effective administration, but this aspect rather contributes to an increase of organization's legitimacy, as it should be in a democratic system. Hence, the EU's definition is more imbued with political values and ideals and it does not highlight concrete and specific examples of a more open regime's implications, as in the case of the World Bank. Even from these two simple statements, the different essence of these two international donors comes out.

The regulation further specifies the conditions and limits of the overarching right to access to documents as stated in Art. 15 TFEU. First of all, it declares that:

*'Without prejudice to Articles 4 and 9, documents shall be made accessible to the public either following a written application or directly in electronic form or through a register[...].'*³²⁰

Articles 4 and 9 do constitute exceptions to the right of access. More precisely, art.4 presents the various instances of exception, while art.9 deals with the treatment of sensitive documents. Therefore, even the EU's policy is based on a the 'negative list' system, as in the case of the WB. Finally, a complaint procedure is contemplated in case of a partial or total refusal by an institution to grant access to the document requested. In this event, the applicant can institute a court proceeding or make a complaint to the Ombudsman³²¹.

However, taking into consideration the development cooperation context, several weaknesses emerge. First of all, the right is limited to citizens or residents of the EU. Hence, non-residents cannot request relevant documents, but they are subject to discretionary decision of the respective institution³²². In this particular instance a further limitation arises, since the old legislative regime does not extend to all European institutions and specifically not to the EEAS³²³.

³¹⁸ TFEU , Art.15.3.

³¹⁹ Regulation 1049/2001, (2).

³²⁰ *Ibid.*, Art.2.4.

³²¹ *Ibid.*, Art.8.1.

³²² *Ibid.*, Art.2.2.

³²³ Dann, 2013, *op. cit.*, pp.483-484.

Apart from this general procedure, which presents several hurdles in order for recipient countries' affected people to activate it, the EU has also committed itself to the International Aid Transparency Initiative (IATI). This voluntary initiative originated during the Accra Forum in 2008, when the Accra Agenda for Action (AAA) was adopted unanimously by OECD/DAC donors and the World Bank. The IATI is part of the four High Level Forums' governance action (HLFs), where different stakeholders involved in global development cooperation (developing countries, donors and civil society) can discuss and set agreed standards for enhanced aid assistance, with the aim to guarantee the achievement of important international goals. The EU has immediately endorsed the IATI, whose goal is that of helping to implement the transparency commitments made during the AAA in as more consistent and coherent way as possible. Indeed, the IATI offers to donors the possibility of sharing aid information in a timely, comprehensive, comparable and accessible way. Specifically, the European Council has agreed to adopt an open and common standard for publishing information on aid activities, during the HLF in Busan, in 2015. Indeed, more transparent development cooperation represents one of the main focus of EC and EU member states, who have also jointly developed an EU 'Transparency Guarantee', committing themselves to publicly disclose all aid information through the above-quoted common standard, in order to enhance their sharing and accessibility³²⁴.

n. The European Ombudsman: a potential to develop

As a general rule, jurisdictional immunity of international development agencies prevent project-affected individuals from filing claims against these institutions before national courts in recipient countries. Taking into consideration the EU context, the accountability of European development institutions toward affected individuals is a really complex affair, for the multitude of laws governing the project implementation, an unclear distribution of responsibilities and the unawareness of competent accountability fora³²⁵. Generally, affected individuals can choose between legal procedures before European courts or non-judicial accountability fora. In the first instance, two relevant proceedings are possible: the action of annulment and the action for damages. They both allow non-EU citizens or residents to file actions against EU organs. However, they include several hurdles as well³²⁶, usually exacerbated by the burden of explanation and proof.

Nevertheless, it exists another mechanism to enhance individual action, which supplements the Community's judicial review system: the European Ombudsman. Established with the Treaty on European Union in 1992, its primary aim is the improvement of the relationship between the European administration and the European citizens³²⁷.

³²⁴ See Liz Steele, *Aid Transparency Index 2014. EU Report*, Publish What You Found, 2014, available at: <http://ati.publishwhatyoufund.org/major-donor/european-commission/>

³²⁵ Schmalenbach, *op. cit.*, pp.177-179.

³²⁶ *Ibid.*, pp.180-183.

³²⁷ See Ann Peters, *The European Ombudsman and the European Constitution*, *Common Market Law Review*, 42: 697-743, 2005, p.699.

At the origins of the ombudsman's creation there are two complementary trends. On the one hand, the delegation of power to administrative authorities and the contemporary increase of national, supranational and transnational administrative activity have entailed a strong reaction at all political and organizational levels, embodied in the establishment of non-judicial oversight mechanisms in many states and intergovernmental organizations. On the other hand, over the last decades, a need for individual rights' protection began to spread against the interferences caused by this new global apparatus³²⁸. Thus, the institution of ombudsmen at a global governance level provides individuals with the possibility to address international organizations and systematically improves the quality of administration in general.

The ombudsman primary focus is on problem-solving and not on compliance review as in the case of the WB's Inspection Panel. This aspect entails the opportunity to establish less binding requirements for accepting complaints and less formal operating procedures, than those required by an inspection panel. Hence, theoretically, an ombudsman shall accept any complaint that identify a harm to affected people, that has been caused or threatened to be caused by an operation of a given organization. Indeed, the ombudsman usually assumes a systemic role, since individual complaints are not conditioned upon specific standing requirements and hence, it admits also an eventual *actio popularis* or in particular circumstances, it can also decide to undertake an assessment on its own initiative³²⁹. In this sense, such a non-judicial mechanism appears more user-friendly, given the flexible and informal nature of its operating procedures³³⁰. However, a greater disadvantage is represented by the minimal role played in assessing the compliance of a given institution, in this case of a European development agency, to its procedures and regulations.

In order to properly fulfill all these functions, an ombudsman must satisfy four basic conditions: offering a fair procedure, being accountable to the public, working effectively and being independent from the executive branch³³¹.

According to Art. 228 TFEU, the European Ombudsman, elected by the European Parliament, shall be:

*'empowered to receive complaints from any citizen of the Union or any natural or legal person residing or having its registered office in a Member State [...].'*³³²

³²⁸ *Ibid.*

³²⁹ *Ibid.*, p.711

³³⁰ Bradlow, *op. cit.*, pp. 477-479.

³³¹ Peters, *op. cit.*, p.699.

³³² TFEU, Art.228.1.

The EO do fulfill a first crucial function, that is the accountability toward the public, since it can receive complaints from any natural or legal person residing in the EU. However, the residence requirement seems to exclude the possibility for project-affected individuals to bring forward their complaints. Nevertheless, the Statute³³³ of the EO does not require any eligibility criteria, concerning the affected party, in order for the complaint to be effective³³⁴, as in the case of the WB's Inspection Panel for example. Hence, a complaint is still admissible even if the requester has not been directly affected by the contested measure or decision. This aspect entails the possibility of an *actio popularis* put forward by an NGO, for example, on behalf of project-affected individuals³³⁵ and without the obligation of their approval, since it is not necessary either.

Instead, when a complaint is presented by a non-authorized claimant, the EO may in any case deal with the matter on its own initiative³³⁶.

The mandate of the EO covers investigation into:

*'maladministration in the activities of the Union institutions, bodies, offices or agencies, with the exception of the Court of Justice of the European Union acting in its judicial role.'*³³⁷

Thus, issues deriving from actions or omissions of EU development agencies, focusing on the design or the implementation of development projects, can be investigated and evaluated against the existing legal standards and those agreed upon in the project agreement by the EO.

Concerning the independence of the EO from the executive branch, Art. 255 TFEU states that:

*'The Ombudsman shall be completely independent in the performance of his duties. In the performance of those duties he shall neither seek nor take instructions from any Government, institution, body, office or entity.'*³³⁸

The independence of the EO is further specified and reinforced in Art.9 of the EO's Statute, where it is declared that taking up his duties the Ombudsman shall guarantee that he will perform his duties with 'complete independence and impartiality'³³⁹. Furthermore, in Art.6.2. of the EO's Statute is affirmed that the Ombudsman shall be chosen among EU citizens offering 'every guarantee of independence'³⁴⁰.

³³³ See the European Ombudsman's Statute, available at: <http://www.ombudsman.europa.eu/en/resources/statute.faces>

³³⁴ TFEU, Art.228.1.

³³⁵ Schmalenbach, *op. cit.*, p.184.

³³⁶ *Ibid.* and European Ombudsman's Statute, *op. cit.*, Art.3.1.

³³⁷ TFEU, Art.228 para.1.

³³⁸ *Ibid.*, para.3.

³³⁹ The European Ombudsman's Statute, *op. cit.*, Art.9.2.

³⁴⁰ *Ibid.*, Art.6.2.

The fairness of the EO's procedure is assured in Art.7.1., Art.8 and Art.9.2. of the EO's Statute, where it is stated that the Ombudsman may cease to exercise his duties on dismissal³⁴¹, when is guilty of 'serious misconduct'³⁴², since he must behave in every instance with 'integrity and discretion'³⁴³.

Process of investigation

Once the ombudsman received a complaint, he has to determine whether the subject matter is within its mandate or not. After having declared the complaint admissible³⁴⁴, the ombudsman has to further assess whether there are 'sufficient grounds'³⁴⁵ to make an inquiry. When he finally establishes that an inquiry can be carried out to further clarify the subject matter of the complaint and to find a possible and satisfying solution, he has also to inform the institution or body concerned by the complaint. In turn, the institution concerned has to notify to the Ombudsman its view concerning the claim, within a period of maximum three months³⁴⁶.

In managing his investigation, the EO can require Community institutions and authorities of the Member States to supply useful information or documents³⁴⁷. Moreover, the EO may inspect the file of the institution concerned.

At the end of the investigation, the EO has to inform the complainant about the all process³⁴⁸. Then, the EO inform the institution or body concerned by means of a report with 'draft recommendations', if he considers that the instance of maladministration can be eliminated by the institution concerned or in the case it has general implications³⁴⁹. Within three months upon receipt of the EO's draft recommendations, the institution concerned has to send the Ombudsman a detailed opinion, which could consist of an 'acceptance of the Ombudsman's decision and a description of the measures taken to implement the draft recommendation'³⁵⁰. As far as possible, the EO has to seek a friendly solution with the institution or body concerned in order to eliminate the instance of maladministration and hence, satisfy the complainant³⁵¹.

If the Ombudsman is not satisfy with the opinion received by the institution concerned, he may draw up a special report to the European Parliament containing further recommendations³⁵².

³⁴¹ *Ibid.*, Art.7.1.

³⁴² *Ibid.*, Art.8

³⁴³ *Ibid.*, Art.9.2.

³⁴⁴ *Ibid.*, Art.2

³⁴⁵ See Art.4.1. *Decision of the European Ombudsman adopting implementing provisions*, available at: <http://www.ombudsman.europa.eu/en/resources/provisions.faces>

³⁴⁶ *Ibid.*, Art.4.3. and European Ombudsman Statute, *op. cit.*, Art.3.1.

³⁴⁷ *Ibid.*, Art.5.1.

³⁴⁸ *Ibid.*, Art.5.2.

³⁴⁹ *Ibid.*, Art.8.1.

³⁵⁰ *Ibid.*, Art.8.3.

³⁵¹ *Ibid.*, Art.6 and European Ombudsman Statute, *op. cit.*, Art.3.5.

³⁵² *Ibid.*, Art.8.4.

The EO is totally independent from the Parliament in carrying out all the process, from the admission of the complaint, to the investigation phase, passing through the cooperation with other European institutions and especially in mediating between the institution or body concerned and the claimant. His primary tool for rule-making are draft recommendations, which constitute a ‘soft law’ mechanism both in substance and legal authority, since they are not binding.

Apart from the lack of enforcement procedures, the EO could represent a crucial and above all, an accessible mechanism for project-affected individuals to hold European institutions accountable. However, he has not gain much attention yet, maybe because of a diffuse unawareness of its potential and a scarce or inexistent knowledge about his procedures in beneficiary countries³⁵³. More probably the EO has not been thoroughly implemented because in many instances he is considered as the second best solution compared to the ECJ. This aspect is probably due to the fact that generally the EO has to present his report to the institution concerned and only in special cases to the European Parliament, apart from the annual report. Hence, he usually receives less institutional attention than in the case of the Board of Directors’ oversight on the Panel procedures. Moreover, compared to the narrow and extremely specific mandate of the WB’s Inspection Panel, the EO has to deal with and report on many more issues areas. Anyway, apart from these critical aspects, the EO has a great potential to develop, especially concerning the European development cooperation context.

³⁵³ Schmalenbach, *op. cit.*, p.185.

CHAPTER III: CRITICAL AND THEORETICAL CONSIDERATIONS

From the previous chapters it emerges that the actual development cooperation context is the result of important shifts occurred over the years at the global level. It is not by chance that transparency and accountability claims began to spread from a precise period of time onward, along with crucial changes in the motifs and beliefs guiding multilateral aid strategies. Three main trends can be observed, that contributed to the emergence of the actual aid governance.

First of all, the previous limited and marginal role of international donors underwent a critical evolution marked , by the growing importance and influence of their procedures in shaping the development-aid system. This transformation essentially resulted from the interrelation of different global dynamics primarily caused by the extensive impact of globalization on the international system. At the same time, the essential role of state in regulating the international system started fading away, imposing a reconfiguration of the relations among the different actors involved in the dynamics of aid delivery.

Secondly, the emergence of new actors and of new guiding principles in the development cooperation context further complicated the existing relationships among IOs, donor and recipient countries and highlighted the necessity of new measures to restore a certain balance and control in development relations.

Thirdly, a set of good governance principles began to form at the same time, directly influencing the organizational structures and procedures of principal international organizations.

The interaction of these three main trends basically resulted, among other things, in the adoption of informal oversight mechanisms inside the institutions in the forefront of aid governance administration.

The examples of the World Bank and of the European Union further illustrate the evolution occurred in the development cooperation context and the strategies they have adopted to cope with the implications of the above-quoted dynamics. The slightly different nature of these two international donors resulted in the adoption of distinct solutions to face their decreased levels of credibility and legitimacy *vis-à-vis* their stakeholders and above all, project-affected individuals.

This third chapter precisely opens up with a comparison of the transparency and accountability mechanisms implemented by these two international organizations. The aim is to highlight that, despite different priorities, strategies and organizational structures of international organizations acting in the same field, common concerns do exist and they can be attributed, in last instance, to the ongoing evolution of global governance regime, of whom development cooperation represents a subset. As a matter of fact, given the actual forms of trans-governmental regulation, whose conditional aid is an example, they all present more or less pronounced levels of democratic deficit and external accountability gaps, which constitute really pressing issues to be solved as faster as possible .

6. A comparison between the World Bank's and the European Union's solutions

o. Different features and common principles

In the first chapter, the importance of multilateral aid delivery in relation to the present development cooperation context has been briefly exposed. Apart from the current problems of coordination and cooperation among old and new aid-delivery organizations³⁵⁴, which do not constitute the primary focus of this dissertation, the existence of multilateral aid agencies proves nonetheless to be essential for the efficiency and efficacy of development cooperation. The institution and the consequent diffusion of such an organizational model has been justified in various way over the years. At first, multilateral aid agencies merely represented convenient structures for a more coordinated and efficient pursuit of collective goals and strategies, thanks to the technical expertise they generally offer to their member states and to the useful flow of information they produce. Specifically, concerning the development cooperation context, multilateral agencies action allowed for more structured and shared strategies in facing the ever new global challenges confronting both recipient and donors countries.

As a matter of fact, the once central regulatory role of state demonstrated to be no more sufficient in dealing with the complex scenarios which were continuously rising from a growing global interdependence. Hence, intergovernmental organizations, among other informal and hybrid forms of regulation, offered the possibility to manage or at least, to cope with the implications deriving from the emergence of a global governance regime. Unfortunately, these new forms of trans-governmental regulation entailed a critical accountability deficit, since they were no more directly subject to control by national governments or domestic legal systems and moreover, they were often directly implemented against private parties³⁵⁵.

This is precisely the case of the World Bank's interference in recipient countries' domestic autonomy, which basically resulted in the implementation of SAPs and SALs and in the subsequent 'good governance' approach, both absorbed in the EU development cooperation strategy.

In order to legitimate their respective approaches and pressed by widespread claims for more external accountability, in particular toward the civil society, these two organizations eventually established the centralized mechanisms of non-judicial review that have been passed in review in the previous chapter. However, it is now useful to compare the functioning and the circumstances in which these measures were adopted, in order to outline their specificity in relation to their respective organizations and to identify some possibly common traits.

³⁵⁴ Woods, 2011, *op. cit.* and Severino and Ray, *op. cit.*, pp.4-6, 10-11.

³⁵⁵ See B. Kingsbury, N. Krisch and R. B. Stewart, *The Emergence of Global Administrative Law*, 68 *Law & Contemporary Problems* 15, 2005, pp.16-17.

Analogous solutions tailored to different requirements

Both the World Bank's and the EU's mechanisms of non-judicial oversight were established from the end of the 1980s onward, along with more general claims of democratic accountability encompassing several rights: from the right of access to information, to the right of participation in decision-making processes, until the right of ensuring organizations' compliance with established standards. However, taking into consideration the examples of the World Bank and of the European Union, a first crucial difference emerges. As a matter of fact, both organizations have adopted very similar measures, but under slightly diverse circumstances.

Taking into consideration the World Bank, the global reach of its action and its principal and limited focus on financing development cooperation projects and programmes, exposed this organization to a widespread criticism and greater pressure essentially from the part of its member states and civil society organizations, all directly involved and having a stake in the development cooperation field. As already stated above, this is primary due to the role undertaken by the Bank as both a public and development institution³⁵⁶, strongly linked to the evolution and expansion of its mandate, in line with a more holistic interpretation of the concept of development and the affirmation of a 'new orthodoxy' dominating official Western aid policy in relation to good governance values³⁵⁷. As a matter of fact, the subsequent interferences in the domestic sovereignty of recipient countries, pursued by the Bank with the adoption of global regulations aiming at directly benefiting distinct groups of individuals, market actors, social interests etc. inside the domestic domain of these states³⁵⁸, basically resulted in an overtaking of the state's role as the main subject of Bank's policies and consequently, in a direct involvement of individuals and/or collective entities.

Therefore, the World Bank started to assume a more independent role *vis-à-vis* the legal mandate conferred to it by its member states at the moment of its institution and hence, the organization began gradually to move away from the primary source of its legitimacy. It is precisely this critical evolution of the Bank's global regulatory regime that entailed a necessary assessment of the organization's legitimacy through *ad hoc* accountability measures.

Concerning the European Union, the adoption of transparency and accountability mechanisms has been a direct consequence of the same nature and administrative regulation of this regional organization, instead of deriving from external claims exclusively related to its development cooperation action. As a matter of fact, as already explained in the previous chapter, European development cooperation represents a distinct sector³⁵⁹ of the encompassing European external action, coherently implemented in accordance with the EU's principles and objectives set out in Art.21 Treaty of Lisbon. However, in the first paragraph of Art.21 is also stated that the EU's action on the international scene:

³⁵⁶ Herz and Ebrahim, *op. cit.*, pp.18-20.

³⁵⁷ See Carol Harlow, *Global Administrative Law: The Quest for Principles and Values*, European Journal of International Law 187, 2006, pp.198-201.

³⁵⁸ Kingsbury, Krisch and Stewart, *op. cit.*, pp.24-25.

³⁵⁹ The different status of Development policy (subject to the normal legislative procedure) *vis-à-vis* the Common Foreign Security Policy (intergovernmental policy) of the European Union is stated in Art.209 TFEU.

*[...] shall be guided by the principles which have inspired its own creation, development and enlargement and which it seeks to advance in the world [...].*³⁶⁰

Hence, European development cooperation derives from the general Union's aim of promoting 'peace, its values and the well-being of its people'³⁶¹, primarily realized in the creation of an area of 'freedom, security and justice without internal frontiers'³⁶² for its citizens, through the establishment of an 'economic and monetary union'³⁶³.

Therefore, European development cooperation represents only one of the several aspects characterizing the actual European action and as such, it is subjected to European internal principles and regulatory regime. This aspect implies that the measures adopted to favor a more transparent and accountable European administration are first and foremost the result of its member states' will. Since the European representative system do not allow for non-members states to take part in it, external actors can only rely on the procedures and agreements' provisions set out in accordance with European principles and values. Hence, it is precisely in relation to European members states' and citizens' demands and independently of developing countries' claims, that the the Ombudsman (Art.228 TFEU) was established, the transparency principle (Art.15 TFEU) was implemented and the IATI initiative endorsed. All these decisions are the result of European principles' application³⁶⁴, in a synthesis of internal needs and external contingencies. Hence, they were not a direct outcome of the widespread criticism linked to the imposition and the direct implications of new aid delivery measures, as in the case of the World Bank. This aspect essentially derives from the more political and diplomatic nature of the European external action, strongly anchored to its integrated regional system, compared to the technical and economic guidance of the WB's global governance.

Nonetheless, the non-judicial oversight mechanisms adopted by the EU proved to be essential in guaranteeing the possibility for project-affected individuals to hold this organization accountable and more precisely the European Commission agencies involved in the delineation and implementation of European development cooperation (DG DEVCO and EEAS). Apart from transparency procedures (which will be taken into consideration later), the Ombudsman turned out to be a more viable solution than the judicial ones, even if not legally binding in its outcomes. In particular, the lack of stringent eligibility criteria and its fundamental problem-solving function confers to this body an extremely flexible nature, integrated with its complete independence and autonomy in activating and completing investigative actions. Moreover, its value is further maximized by a clear lesson learned function³⁶⁵, providing essential feedback material for further improvements of European administrative functions. However, the transversality of EO's action, encompassing all relevant cases of maladministration that can occur in different organizational sectors of European policies and which essentially reflects EU's organizational needs, may actually badly affect the importance of development cooperation's matters, resulting in a less efficient accountability action.

³⁶⁰ TEU, Art.21.1.

³⁶¹ *Ibid.*, Art.3.1.

³⁶² *Ibid.*, Art.3.3.

³⁶³ *Ibid.*, Art.3.4.

³⁶⁴ *Ibid.*, Art.3.5. and Art.21.

³⁶⁵ EO's Implementing provisions, Art.11.

Comparing the European Ombudsman to the WB's Inspection Panel, it emerges that the primary compliance review function of the Panel is regulated by a series of mandatory requirements to be fulfilled, in order for the Panel to register the complaint. This preventive measure was introduced at the beginning of the Panel's mandate, when this body still constituted the unique example of IAM. Indeed, at that moment, it was not really clear how non-state actors would have implemented it and what kind of concrete implications such a mechanism would have triggered for the Bank's daily operations. Another particular aspect concerns the requirement of Board's authorization to start an investigation.

Hence, compared to the completely autonomous action of the EO, the Panel is subject to a further control by its member states. This is due to the more technical vocation of the WB, relying on the prominent role of the Bank's management, as fundamental agent of the mandate conferred to him by member states. According to the agency theory³⁶⁶, delegation of tasks from states to staff members may result in two main problems: moral hazard and adverse selection. The first instance occurs when the agent deviates from the instruction given to him by the principal and advances his own interests, instead of those of the principal. Instead, adverse selection takes place when the agent may have access to information inaccessible to the principal and consequently, may manipulate them against principal's interests³⁶⁷. Both instances justify a stronger control of member states on the Panel's investigative action and at the same, ensured a more significant institutional attention to the issues presented. The unique nature of EU's organization, instead, do not require a close oversight control over the EO's investigative process, given that the EU's administration is based on a high level of interstate integration and on a direct democratic control³⁶⁸ of member states and European citizens over the action of EU's institutions. As a matter of fact, the European supranational action has to fulfill a more subordinate role of coordination and assistance of domestic administrations in the design and implementation of all common policies and hence, it ultimately depends on all member states' final will³⁶⁹, toward it is directly accountable. The role of the EO is that of improving the accountability relationship between the European administration and EU citizens. However, its flexibility makes the EO an ideal mechanism to reduce EU's external accountability gaps *vis-à-vis* project-affected individuals.

In spite of the different circumstances at the origins of these two accountability mechanisms and their different interaction with the respective organizational context of reference, both of them perform a crucial informative action toward their respective organizations. Furthermore, since they can be activated by affected non-state actors or by valid representatives in their place, the outcomes of the investigations generally provide a real ideal of the impact caused by organizations' operations. In this way, they enable their respective institutions to self-reflect on the implications of their actions and they imply the potential adoption of solutions or measures of redress, further enhancing organizations' credibility and a general improvement of their operations.

³⁶⁶ See B. Martens, U. Mummert, P. Murrell and P. Seabright, *The institutional economics of foreign aid*, Cambridge University Press, 2001, pp.9-11.

³⁶⁷ *Ibid.*

³⁶⁸ TEU, provisions on democratic principles, Arts.9-12.

³⁶⁹ Kingsbury, Krisch and Stewart, *op. cit.*, p.18.

However, the activation of these accountability mechanisms could not take place without a transparent definition and adoption of the respective organizations' operations and procedures. Even in this instance, the peculiarity of the EU's administration do not allow for a specific 'access to information policy' only in relation to the European development cooperation policy sector, apart from the endorsement by the European Council of the IATI voluntary initiative. Therefore, affected individuals have a very limited, if inexistent, access to European development cooperation relevant documents and procedures. Hence, transparency regulation is almost exclusively limited to European citizens³⁷⁰.

Again, the nature of the WB's administrative structure and its clear and specific mandate directly empower civil society and affected individuals to access relevant documents, even if important gaps are still present.

However, despite the differences that emerged from this brief overview of WB's and EU's non-judicial oversight mechanisms, mainly attributable to the different scope and mandate of both organizations as well as to the reach of their actions which, in the case of the EU, are primary focused on a inner regional dimension and only later they develop an extra-European and large-scale effort, both organizations share several concerns about their legitimacy and credibility as intergovernmental organizations and have found analogous solutions to these issues.

The 'democratic accountability' common denominator

The establishment and subsequent implementation of non-judicial oversight mechanisms by the WB and the EU occurred more or less over the same period of time, along with the contemporary increase of national, supranational and transnational administrative activity and the spreading of a need for individual rights' protection against the interferences caused by this new global apparatus³⁷¹. In the case of the WB, these measures were directly related to its domain of action, that is development aid deliver, while inside the EU there was rather a need to reduce potential gaps between European institutions and European citizens. Thus, a general trend developed across different international organizations, both at a global and a regional level. Common concerns arose concerning the legitimacy and the credibility of these organizations' administrations *vis-à-vis* non-state actors and a new willingness came to light in ensuring new forms of democratic overview to affected individuals.

³⁷⁰ See Regulation 1049/2001, Art. 2.2.

³⁷¹ Peters, *op. cit.*, p.699.

Both the examples of the WB and of the EU present some common features and probably reflect the need for innovative means of power distribution and consultation in a changed global governance context, strongly influenced by the affirmation of democratic principles. As a matter of fact, over the past decades, the legitimacy of national regimes has mainly passed through the establishment of democratic governance³⁷². However, at the international level it is difficult to replicate domestic electoral mechanisms of accountability, given the absence of both a global public and of a unified political structure³⁷³. Moreover, growing transnational interactions cannot only rely on the exclusive and traditional role of the state as sole representative of individuals' needs. Hence, new mechanisms have been established aiming at guaranteeing an adequate democratic involvement of individuals in international organizations operations and procedures.

This is precisely the purpose at the origin of the WB's and the EU's establishment of non-judicial oversight mechanisms.

Taking into consideration the transparency policies of these two organizations', it emerges that both of them have undergone a significant evolution over the years, which contributed to further expand the reach of available documents as well as their primary aims. As a matter of fact, what represented a forced choice at the beginning, encouraged by changing attitudes about what constituted IOs' appropriate behavior according to a worldwide consensus among involved actors and observers³⁷⁴, it then developed into an essential tool for the legitimacy and the efficiency of both organizations. This aspect is clearly stated in the first article of the WB's access to information policy, where transparency is considered as an essential means for 'building and maintaining public dialogue' as well as for 'enhancing good governance, accountability and development effectiveness', through the promotion of a Bank's engagement with its stakeholders³⁷⁵.

Considering the EU's approach to transparency, the adoption by the Commission of a White Paper on Governance³⁷⁶ marked a turning point in the evolution of openness, overarching concept and principle from EU's point of view, encompassing also transparency procedures. Precisely in relation to openness, in the White Paper on Governance this notion is regarded as one of the five principles underpinning good governance, together with participation, accountability, effectiveness and coherence³⁷⁷ and the primary goal of the EU governance reform is to 'open up policy-making to make it more inclusive and accountable', closely connecting the EU to its citizens and hence, leading to more effective policies³⁷⁸. As a matter of fact, through all the Paper there is a constant reference to a better involvement of citizens in public dialogue, since EU institutions can demonstrate more responsive to citizens' needs only by building new partnership and relying on a wide variety of actors³⁷⁹.

³⁷² Herz and Ebrahim, *op. cit.*, p.18.

³⁷³ Keohane, *op. cit.*, pp.77-78.

³⁷⁴ See Ann Florini, *The End of Secrecy*, Foreign Policy, n°111, 1998, pp.50.

³⁷⁵ WB's Policy on Access to Information, *op. cit.*, I.1.

³⁷⁶ See White Paper on European Governance COM(2001)428 final.

³⁷⁷ *Ibid.*, p.8.

³⁷⁸ *Ibid.*, p.6.

³⁷⁹ *Ibid.*, p.32.

Therefore, in both the WB's and the EU's examples, transparency and openness notions are strongly related to the principle of 'public dialogue' as a way toward more democratic participation. At the same time, they denote a profound change both in the distribution of power and in the way in which it is exercised³⁸⁰. As a matter of fact, the spread of transparency measures at all levels and sectors of administrative activity, development cooperation included, has caused an increase in the number of civil society groups and citizens entitled to hold powerful entities accountable. As a consequence, the actions of these institutions have gained in legitimacy, through the informed consent³⁸¹ of individuals who can now access to their relevant information.

Therefore, the more extended the reach of administrative activity, the much wider the group who should agree on the legitimacy of power-wielder actors. Given the global context in which both the WB and the EU operate, the acceptance and the implementation of 'regulation-by-revelation'³⁸² measures has provided the possibility for a first enlargement of individuals rights in holding IOs accountable. However, it has been argued that transparency mechanisms are too soft to create real accountability and that they do not always represent an efficient deterrent for ensuring higher compliance, as in the case of traditional 'hard' command and control regulation³⁸³.

However, if transparency is mutually supported by other accountability mechanisms, such as investigative bodies, their action can be further enhanced, until reaching some form of enforcement in certain circumstances. First of all, the establishment of an inspection panel or of an ombudsman in a given organization provide a further institutionalization of public dialogue, since affected individuals can submit a complaint whenever they feel the need to do so. Thanks to the disclosure of relevant information through *ad hoc* regulations, citizens can gather all the necessary information in order to possibly recognize a case of non compliance of an organization's action against its own procedures. In this way, individual mechanisms of non-judicial oversight contribute to create specialized forums in which a dialogue can take place between power wielders and affected individuals on specific facts³⁸⁴. Consequently, transparency further reinforces the efficiency and efficacy of such mechanisms, guaranteeing the validity and the credibility of complaints and differentiating them from other specious claims, by means of available criteria regulating the eligibility of the requests³⁸⁵. Finally, investigative reports can activate a self-reflection of power-wielder actors on their actions, exposing their own behavior to themselves³⁸⁶. The conflict which emerges between the infringement of specific provisions and internalized norms, corresponding more or less to the values of an organization, its legal culture and the norms of appropriateness pervading an institution³⁸⁷, can further lead to a change in power-wielders' behavior and eventually push them to comply with their own norms. This event usually takes place when the internal procedures of an organization possess a high normative level.

³⁸⁰ Florini, *op. cit.*, p.51.

³⁸¹ *Ibid.*, p.52.

³⁸² *Ibid.*, p.53

³⁸³ *Ibid.*, p.61

³⁸⁴ See T.N. Hale and A.-M. Slaughter, *Transparency: Possibilities and Limitations*, Fletcher Forum of World Affairs, vol.30:1, 2006, p.85.

³⁸⁵ *Ibid.*, p.86.

³⁸⁶ *Ibid.*, p.86.

³⁸⁷ See Thomas N. Hale, '*Info-Courts*' and the Accountability of International Organizations: Evidence from the World Bank Inspection Panel, 2008, pp.6-7.

Once all these aspects are taken into consideration, it emerges that non-judicial mechanisms of individual oversight can function as additional checks on IOs' behavior, engaging and empowering individuals not because they are citizens of a particular states but because they have a direct interest in what a given organization does³⁸⁸. The relative flexibility and informal nature of these specific mechanisms allow stakeholders to influence the organizations' decisions directly affecting them, everything depends on their ability and political will to submit a complaint.

Therefore, these mechanisms provide accessible means to directly inform organizations on their own activities, giving them possibility to improve their action and at the same time to appear more responsive to their stakeholders and thus, gradually reduce external accountability gaps.

However, these means present some limitations as well. First of all, they cannot remove all power asymmetries and secondly, in many cases they require significant expertise and finances. This gap is usually filled by the action of third parties, like NGOs, as in the case of the EO, where the only way non European citizens have to submit a request is through the action of a representative, usually an NGO taking charge of their interests.

From this brief overview it emerges that democratic accountability represents a central concern in both IOs taken into consideration. The case of the World Bank maybe can be more easily understood, given the actual role played this institution at the global level and the influence of its governance model on the entire development cooperation system. As far as the EU is concerned, the existence of a European Parliament, guaranteeing a democratic representation to European citizens and empowered with a legislative function as well as the possibility to exercise a political control on the EU administration, has not seem sufficient. Indeed, the fact that the EO has been primary instituted to provide EU citizen with a more direct means to EU institutions accountable, even if through a soft law system, may be signify that these mechanisms proves to be more efficient in setting out individual initiatives in specific circumstances.

Nonetheless, a democratic deficit still exist across different sectors and IOs operating at the global level. Development cooperation context is not the only relevant field in which democratic accountability gaps emerge and further influence the relationships among all the actors involved. However, even the actual conception of development, encompassing different aspects of human life, from the economic, to the social and political ones etc. has acquired a global connotation. Moreover, the substantial impact of IOs' action on affected individuals is more easily recognizable in such a context, along with the responsibility of power-wielder actors. Finally, the evolution of the WB's governance model further exemplifies the changes occurred in global politics over the last decades. Instead, the case of the EU is useful in illustrating that a strong regional integration among quite similar actors and regulated by a system of democratic representation is not always sufficient in enhancing citizens active participation and above all, it is not as satisfying in guaranteeing its external accountability to project-affected individuals.

Therefore, development cooperation constitutes a good example to describe how the actual global governance regime has evolved under the effect of two main trends: global economic integration and democratization.

³⁸⁸ Hale and Slaughter, *op. cit.*, pp.87-90.

7. **Toward a convergence of principles in the development and global governance context?**

p. The crisis of legal dualism and the affirmation of ultra-state administrative law

At the origin of multilateral development aid there is the institution of IOs, such as the WB, which at those times were mainly regulated by international administrative law. As a matter of fact, right after the WWII, the international system was still based on the central role of state as main source of all administrative organization³⁸⁹.

This system was essentially characterized by an intrinsic dualism between the domestic legal order and the international one, with both relying on the existence and the action of sovereign states. At the domestic level, public authorities generally receive the administrative power by means of democratic elections. This mechanism guarantees the participation of all citizens to the public administration of the state and at the same time, protect them from potential abuse of power by public authority. However, according to legal dualism theory, at the international level a direct relationship between IOs and private parties did not exist. Indeed, international citizens' representation mainly passed through the participation of states in diplomatic conferences and treaty-making action. Hence, the institution of IOs and their actions were essentially influenced by states, who generally exercised a mediation role in dealing with IOs' decisions, preventing them from reaching private parties without their consent³⁹⁰. Therefore, until the end of the 1970s, the role of the state proved to be essential in implementing the domestic application of international rules. This aspect is also confirmed in the development cooperation context and in the more limited role played both by the WB and the EU, this one precisely with ACP countries, in respect of recipient countries' sovereignty.

However, already at the end of 1970s and over the whole next decade, the central role exercised by the state in the international arena is gradually eroded by the affirmation of economic liberalism, favoured by the contemporary globalization action. The 1980s marked a neoclassical turn in development cooperation approach, in line with the international trend of that period. It is precisely over these years that the WB began to issue SAPs in recipient countries with all its relevant implications and 'forced' the EU to adapt this same strategy in its relationships both with ACP countries and with the rest of the world. This increased ability of IOs to penetrate state domestic legal systems triggered a first seism in the legal dualism that has constituted the main reference point for international relations until that moment.

³⁸⁹ See Stefano Battini, *International Organizations and Private Subjects: A Move Toward Global Administrative Law?*, IILJ Working Paper 2005/03, pp.6-9.

³⁹⁰ *Ibid.*

When, at the end of the 1990s, the WB's finally adopted the concept of good governance, the incessant process of economic liberalization was then firmly linked to the promotion of political liberalism and democratization³⁹¹. In these circumstances, the direct impact of IOs' administrative action on private parties became even more evident. However, this shift in regulatory decisions from the national to the global level was not underpinned by a subsequent adjustment of accountability mechanisms. As a matter of fact, the development of IOs' functions and the expansion of their policies' reach, subsequent to an increased level of globalized interdependence, had entailed a further transformation of their regulatory function, no more directly subject to the control by national governments or domestic legal systems. Hence, from this moment onward, the IOs directly implemented their actions against private parties, without the possibility for affected individuals to be guaranteed against harmful or damaging outcomes of these organizations' operations.

q. Toward a global administrative law?

The spread of democratic regimes from the end of the Cold War confrontation onward and the implications of the process of globalization have more or less directly influenced the realization of several crucial shifts at the international level concerning the nature of law, the organization of actual global governance and the involvement of central actors. Development cooperation has been affected by these crucial changes as well. A global governance space has emerged, where different actors, IOs included, regulate and manage vast sectors of economic and social life through specific rule-making, usually operating below the international administrative law level³⁹². This space, where these global administrative bodies enjoy more *de facto* discretion and independence to be considered as mere agents of states³⁹³, present a relative autonomous and distinct character.

Taking into consideration the role of IOs, and specifically that of the WB, it emerges that global administrative regulation presents a different nature of law, being more decentralized, flexible and contextualized to different circumstances and temporary requirements. This is in partly due to the specificity of its law-making process, which is usually more dynamic and experimental than the traditional ones. The adoption of disclosure policies and of the Inspection Panel by the WB, but also the EO to a more limited extent, are the consequences of the innovative character possessed by global governance regulation. They constitute a direct effect of the evolution underwent by this new rule-making regime.

³⁹¹ Harlow, *op. cit.*, pp.198-200.

³⁹² Kingsbury, Krisch and Stewart, *op. cit.*, pp.18-20

³⁹³ *Ibid.*

As a matter of fact, these mechanisms fulfill another important function enhancing the accountability of these institutions through an ongoing review of their action and at the same allowing a more active participation of all relevant stakeholders in the decision-making process. In this way they satisfy the guiding principles of this new global administrative law that is: transparency, participation and judicial review³⁹⁴, while addressing external accountability gaps. As a consequence, directly affected private parties are firstly empowered with the right to obtain relevant information, autonomously and directly exercised against these IOs. Thus, the collaboration of the state they belong to is no more required³⁹⁵. Secondly, they can immediately challenge an organization's decision, without having to act through their governmental delegate, activating non-judicial mechanisms of individual oversight on the legitimacy of the decisions made by IOs³⁹⁶. These new rights of private subjects, exercised directly and independently from their national governments, represent a series of *ad hoc* measures that have been implemented in an attempt at democratizing the present global system.

All the mechanisms presented in this work, the practices they promote and the principles that have inspired them, primary focused on the promotion of IO's accountability, ensuring they meet adequate standards of transparency, reasoned decision, participation, legality and effective review of the rules and decisions made by these organizations, these same measures composed the current global administrative law. Born from a series of crucial changes that have profoundly transformed the actual international system, causing a redefinition of the roles of its traditional actors and the reconfiguration of a new system of relationships among new and more informal actors along with the traditional ones, global administrative law represents the most viable solution at present, not only for the regulation of the development cooperation system, but also for the management of all those economically and socially relevant fields that have been affected by a growing global interdependence.

However, casting global governance in administrative terms might lead to its stabilization and legitimization privileging the dominance of Northern and Western concepts of law and sound governance as well as the prominence of democratic principles³⁹⁷. Nonetheless, it results in a useful practice for better framing the ongoing evolutions at all levels of public administration: national, regional, supranational and global.

³⁹⁴ Battini, *op. cit.*, pp.21-28.

³⁹⁵ *Ibid.*

³⁹⁶ *Ibid.*

³⁹⁷ Kingsbury, Krisch and Stewart, *op. cit.*, p.27.

CONCLUSION

Through the adoption of a crossing approach, encompassing economic, political and legal aspects of the issue contemplated in this dissertation, it has been possible to frame the complex relationship involving transparency and accountability concepts and their further integration in the development cooperation context.

The analysis of these three main notions underlined an interesting aspect concerning the evolution and a further meaning's expansion that these three concepts have undergone over the years. For example, it emerged that the inherently subjective nature of the development notion basically prevents the adoption of any univocal definition, rather requiring a constant interpretation in relation to the social and historical circumstances in which the concept is employed. From an historical excursus of its evolution, it subsequently emerged that what was firstly interpreted as mere economic and financial necessity, over the years acquired a more holistic connotation, until involving a new interest for environmental and human rights aspects. This further expansion reflects the contemporary extension underwent by the WB's and the EU's mandates, in relation to their development cooperation policies and the implications this important shift had on the interactions among these organizations and the other actors involved in development aid delivery. It is precisely in this context that the notions of transparency and accountability acquired their actual meaning. In particular, the primary and almost exclusively financial connotation of accountability did not impede its further interpretation in relation to a much broader context. Indeed, both concepts have been recently put in close relation to the latest transformations occurred in the development cooperation context and in global governance.

As a matter of fact, the current widened and far-reaching scope of action of the WB and the EU entailed a reformulation of the relationships between these IOs, their member states, partner countries and affected individuals. This aspect has been further examined taking into consideration the mechanisms implemented by these two organizations. It derived that despite the differences in their mandate and their internal administrative regulation, both institutions eventually resulted in adopting similar solutions to the legitimacy problems they had to face *vis-à-vis* their stakeholders, given also the role they recently assumed in the global arena.

As a matter of fact, the innovative non-judicial oversight mechanisms, that both organizations have recently developed, can guarantee an efficient and at the same time, democratic supervision over IOs' actions and operations, ensuring the compliance of these institutions with their internal procedures and values. Their importance is far more outstanding since they represent a common solution adopted by other global governance bodies. Indeed, in every instance, it emerged an attempt at ensuring important guarantees for civil society and individual actors, who currently constitute the direct subjects of several decisions taken inside global regulatory systems whose actions are not limited to the development cooperation arena.

In last instance, it emerges that the problems of external accountability in multilateral aid agencies actually represent only a small sector of a much wider concern involving the democratic accountability of all relevant IOs as well as of other forms of transnational bodies currently involved in different forms of global regulation. Nonetheless, the development cooperation context constitutes a valuable example for further analysis dealing with the affirmation of a global administrative law.

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LIST OF FIGURES

Figure 1: a simple representation of aid architecture.....	28
Figure 2: A first approximation of the relation between transparency and accountability...41	
Figure 3: Unpacking the relationship between transparency and accountability.....	42
Figure 4: The Inspection Panel process.....	72