

SUMMARY OF PANEL 7: THE ROLE OF INTERNATIONAL FINANCIAL INSTITUTIONS IN COMPLIANCE AND ENFORCEMENT

Moderator: Adriana Bianchi, World Bank Institute

Panelists: Sheng Shuo Lang, Multilateral Fund for the Montreal Protocol Secretariat
Alberto Ninio, World Bank

Dariusz Prasek, European Bank for Reconstruction and Development

Rapporteur: Melanie Nakagawa, INECE Secretariat

1 INTRODUCTION

This panel addressed the role of multilateral development banks in environmental compliance and enforcement. Panelists discussed measures to ensure internal compliance with the banks' own environmental and sustainable development policies, such as inspection panels, compliance advisors and offices, accountability mechanisms, etc. They also explored ways banks can support environmental compliance and sustainable development in countries receiving funding. This support may include indigenous policies, environmental impact assessments, and other relevant activities. Finally, panelists and conference participants brainstormed practical mechanisms to improve environmental governance and to meet sustainable development objectives.

2 PRESENTATIONS

2.1 Presentation by Mr. Sheng Shuo Lang

Mr. Sheng Shuo Lang's presentation focused on the Multilateral Fund's use of funding as leverage to help developing countries comply with the Montreal Protocol. The Fund's assistance to China to reduce and eliminate the production of chlorofluorocarbons (CFCs) exemplified the effectiveness of a performance-based funding modality. China became the largest CFC producer in the world after the developed countries terminated CFC production

in 1996. China produced 45,000 tons of CFCs in 1997; since then production has been growing in double digits every year. In 1999, China agreed to close down its plants if the Fund would pay China 150 million dollars in annual installments. Funding was conditioned on achievement of agreed-upon production reductions and on independent verification. On-site verification was satisfied by reviewing plant records on level of production, consumption of raw materials, number of days of production, and other details. Any default on reduction achievement could be penalized by US\$1,000 for each ton not reduced.

2.2 Presentation by Mr. Alberto Ninio

Mr. Alberto Ninio's presentation focused on the accountability and function of the World Bank Inspection Panel. The Panel, created in 1993, is the oldest accountability mechanism in the context of multilateral organizations. Mr. Ninio shared his reflections on the Panel and described what is happening on the ground. First, he explained some limitations on multilateral development banks. For instance, the government, not the Bank, is responsible for implementing projects; the Bank can only suspend disbursements and subsequently leave the project altogether. As a result, long-term sustainability of agreed measures may be compromised. This problem can be addressed if public funds are used with transparency and if regional development banks are responsible to the people and shareholders.

Mr. Ninio stressed the importance of accountability. In response to demands to finance in a socially responsible manner, the Bank adopted several policies and an independent verification and accountability mechanism – the Inspection Panel. Creation of the Panel signaled a shift in public international law giving nongovernmental organizations (NGOs) and individuals access to the highest level of the Bank, the Board of Directors. Mr. Ninio believed that the Panel has had a positive impact despite a limited number of complaints and a conservative cost estimate of about \$20 million over the past 12 years. On balance, the positive change he has witnessed in the Bank's internal culture of compliance may be viewed as a considerable feat.

Mr. Ninio concluded by discussing recommendations for the future of the Inspection Panel. He recommended mandatory facilitation or mediation because he felt this process could easily dispose of some complaints. He also recommended mandatory sharing of lessons through dialogue, as this is not currently done on a systematic basis. Similarly, the Panel could have an advisory component. Mr. Ninio mentioned that stricter timeframes could apply to the investigation phase to ensure that the Panel's findings are available without major delays. Lastly, he suggested having either a fixed panel that is completely replaced after five years, or having ad hoc specialized panels for each case.

2.3 Presentation by Dr. Dariusz Prasek

Dr. Dariusz Prasek discussed environmental appraisal of investment projects and environmental compliance and enforcement from the perspective of the European Bank for Reconstruction and Development (EBRD). He began by outlining common misconceptions of EBRD's abilities, environmental safeguards, regulations, and mechanisms for enforcement. Established in 1991, the EBRD is the youngest of the regional development banks. It is owned by sixty-two countries

and two supranational shareholders: the European Union and European Investment Bank. Although based in London, it has regional offices in all countries of operation, including Central/Eastern Europe and some parts of Asia.

In 1991, the EBRD became the first international organization given an environmental mandate, consisting of guiding principles for environmental and sustainable development. The EBRD mandate touches on the issues of community, involuntary resettlement, and labor standards. The EBRD handles both small- and large-scale projects, such as the Baku-Tbilisi-Ceyhan pipeline project. It is guided by environmental policy and focuses on conducting environmental projects to manage risk, disclose information, and have thorough consultation.

The EBRD also has the youngest accountability mechanism – an independent recourse mechanism – drawing on lessons learned from the Inspection Panel and the International Finance Corporation's Compliance Advisory Ombudsman.

The EBRD's classification system determines the impact of each Bank project, guided by the principle that compliance with national laws is always a must. The project must meet both national regulations and European Union standards. If there are issues to be mitigated and improved as a result of due diligence, the Bank agrees with clients on Environmental Action Plans. These plans are legal agreements conducive to achieving international good practice standards. Dr. Prasek stressed the importance of meaningful consultation and monitoring activities during project implementation. This is often where NGOs play a role because they raise the issues and conduct periodic environmental assessments.

Dr. Prasek concluded his presentation by briefly discussing the EBRD's independent recourse mechanism, stating that its two main functions are problem solving and compliance. He believed that international commitments can be met at the project level through compliance and enforcement mechanisms. He emphasized the

importance of working in partnerships because small institutions cannot solve everything.

3 DISCUSSION

After the presentations, there was a period of questions and answers. The panelists fielded a variety of questions ranging from inspection monitoring to verification procedure.

One key point raised was the different verification mechanisms used by each organization:

- In the Multilateral Fund, independent auditing firms carry out verification.
- In the World Bank, verifiers are selected by the World Bank President with the approval of the Board of Directors, and can never be hired by the Bank again as employees or consultants.
- In EBRD bank audits, there is independent verification and routine requests for corporations to achieve various certifications, including ISO 14001.

Another important issue raised was the use of EBRD's political leverage to

achieve recipient country domestic compliance with EBRD standards. Similarly, Dr. Adriana Bianchi noted the private sector's use of the Equator Principles to achieve environmental safeguards in project lending and financing.

4 CONCLUSION

The final set of questions brought forth the notion that INECE can work with enforcement and compliance groups for capacity building on a variety of levels. Currently, the World Bank has worked on capacity building with INECE, with a recent presentation on indicators given at the Bank by Mr. Michael Stahl of the US Environmental Protection Agency and INECE. At a local level, there is still work to be done. Mr. Ninio pointed out that a project typically takes three to four years to prepare, and building capacity can take a lifetime. Thus, there is a need to balance the timing of forming capacity and moving the project forward. Often this process is done in parallel in accordance with public participation and by considering mitigation of offsets.