

**PART 2**

*International Inspection and Control Mechanisms*





# An Overview of the International Inspection and Control Mechanisms

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## I Foreword

This section will be devoted to *International Inspection and Control Mechanisms*, a virtually unexplored field in terms of dispute settlement in international law, and the general legal literature available on the issue is very limited.

Accordingly, in order to promote the scientific debate on the subject, this section will be divided into two parts. On the one hand, at an introductory level, a brief presentation of some of the existing international inspection and control mechanisms will be made in order to give an overview of the mechanisms that are usually included in its scope. On the other hand, forming the core of the section, José Narciso da Cunha Rodrigues, Chairperson of UEFA's Financial Control Body will make a presentation about the activities of that entity. The very extensive *curriculum vitae* of the speaker, in addition to the position he has been exercising for the past two years, make it necessary only to highlight the fact that he served as Attorney-General of the Republic of Portugal between 1984 and 2000 and that he was a Judge of the European Union Court of Justice between 2000 and 2012.

The overall picture of the mechanisms that will be presented and the in-depth analysis of the activities of the UEFA Financial Control Body offer a chance to assist in the publicising of this issue and, in this way, to contribute to the promotion of its research at an international law level<sup>1,2</sup> As with all the seeds

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1 An example of a research study in progress on the matter in an international law perspective is, "International Grievance Mechanisms and International Law and Governance (IGMs)", coordinated by Vanessa Richard, under the CNRS, appearing between 01/12/2012 and 30/12/2016, with funding from the European Research Council (ERC Grant No. 312514) (summary of the project available at <http://www.igms-project.org/EN/about/DescriptionIGMsEN.pdf>). In accordance with the information available, "[t]his research intends to explore these international regulation mutations and justiciability gaps revealed by a global governance approach through an in-depth study of the international mechanisms which grew in the cracks, the *inter*-national being materialised here as an 'in-between' space or a 'legal no man's land' rather than an 'among'. For the purpose of this project, international grievance mechanisms (IGMs) are defined as non-judicial grievance mechanisms set up on a permanent basis by non-binding international instruments or international organisations, which

that are being sown, the existence of fruit and its quality is something that can be appreciated only in the future, particularly in any future *call for papers* that may be open to other international conferences on dispute settlement.

## II Introduction

A first approach to international inspection and control mechanisms should begin with an inquiry into its legal-international nature in order to answer the basic question of whether we are in the presence of international courts or international dispute settlement mechanisms.

In the second edition of the *Manual on International Courts and Tribunals*, edited by Ruth Mackenzie, Cesare Romano, and Yuval Shany, with the participation of Philippe Sands, in 2010,<sup>3</sup> the international inspection and control mechanisms appear to be grouped in the sixth part of the work and are referenced under the descriptive designation of *Inspection, Review, and Compliance Mechanisms in International Financial Institutions*. The sixth part of the work is divided into two points, viz. 17. The Inspection Panel of the World Bank, and 18. Other Inspection, Review, and Compliance Mechanisms in International Financial Institutions. In the remaining six parts of the work the following matters are treated sequentially: I. Global Courts; II. Arbitration Institutions; III. International Criminal Courts and

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aim at calling an entity—either public or not—to account for its actions in situations where no responsibility/liability mechanism can be set in motion because of the nature of the actors involved, and the lack of direct legal connection between them, and the non-binding character of the instruments these mechanisms ‘control compliance’ with. They answer to a regulation and justiciability gap, they emerged along some diagonal relationships the global governance approach brings to light and they also reveal a search for values: all in all, they deal with those relations which are “disregarded by the system (Steward, 2008)”, in bold in the original (pp. 2 and 3).

- 2 Analyzing the issue from a global administrative law perspective, see Thomas N. Hale, “Info-courts’ and the accountability of international organizations: evidence from the World Bank Inspection Panel”, paper presented at the 4th Global Administrative Law Seminar. Global Administrative Law: From Fragmentation to Unity, Viterbo, June 13–14, 2008 (available at <http://www.iilj.org/gal/documents/Hale.pdf>).
- 3 *International Courts and Tribunals Series*, Oxford University Press. The use of this work as a starting point for the search for an answer to the question posed is justified, as stated by James Harrison of the University of Edinburgh, in the review made about the work in question, because it is “a reference book. It presents basic information about the most significant international dispute settlement mechanisms in existence today” (*The Edinburgh Law Review*, vol. 15, 2011, pp. 340–342). The first edition of the work, edited by Philippe Sands, Ruth Mackenzie and Yuval Shany, was published in 1999 (London, Butterworths).

Tribunals; IV. Regional Economic Integration Bodies/Free Trade Agreements; v. Human Rights Bodies; and VII. Compliance Procedures in Multilateral Environmental Agreements.

According to the cited work, the mechanisms included in Part VI “do not fall strictly into the categorization of ‘international courts and tribunals’”, and “[t]hey comprise a variety of mechanisms, involving a variety of fact-finding, forms of mediation and other procedures, established within international and regional development banks to provide a forum to which affected parties may bring concerns or complaints alleging that the bank in question is not complying with its own policies and procedures in respect of a specific project”.<sup>4</sup>

In the work developed by PICT—*The Project on International Courts and Tribunals*<sup>5</sup>—from which the *Manual on International Courts and Tribunals* is one of the most interesting results—it is important to note that the particularities of the *Inspection Panels* led to the creation of a specific grouping by placing them in the generic category of *Quasi-Judicial Other Implementation and Control Dispute Settlement*, taking into account the characteristics they shared with the remaining one hundred twenty-five international bodies and mechanisms used in the analysis. According to Cesare Romano, in 2004,<sup>6</sup> despite its “staggering diversity”, the entities in question had in common the following characteristics: firstly, “all of these entities make legal determinations (...). To be precise, these 125 bodies determine whether certain acts are congruous with certain norms”; secondly, “in order to make their determinations they all resort to the same body of law: international law”; thirdly, “all of these international bodies have been established directly or indirectly (i.e. through a decision taken by a body established by treaty) by international agreements”; fourthly, “they are subject to a legal order that is different from that of national systems, but, at the same time, that they are subject to (and materially dependent on) State support”; and finally, “collectively they are the expression of a widely shared need to abandon a world where only States count and might rule, in favor of an order where certain fundamental common values are shared, protected and enforced by all members of a wide society, composed of States, International Organisations and individuals in all their legal incarnations (NGOs, peoples, corporations, natural persons, etc.)”.

The previous references are useful with regard to the collection of some elements for an answer to the question initially formulated about international

4 *Handbook on International Courts and Tribunals*, 2nd ed., Oxford University Press, 2010, p. 461.

5 About PICT—*Project on International Courts and Tribunals* see the materials available at <http://www.pict-pecti.org>.

6 *The International Judiciary in Context: the Synoptic Chart* (available at [http://www.pict-pecti.org/publications/synoptic\\_chart/synop\\_c4.pdf](http://www.pict-pecti.org/publications/synoptic_chart/synop_c4.pdf)).

inspection and control mechanisms. Firstly, as they are not international tribunals in the strict sense of the term, they can be qualified as international dispute settlement mechanisms. Secondly, their activity is regulated by international law acts within the framework of international organizations, not being dependent on the internal law of any State to be able to act. And, thirdly, the legitimacy with regard to triggering their activity is attributed to natural and legal persons having the nationality of any State, without the prior exhaustion of the domestic remedies of the State where the dispute is occurring being necessary.

The above references, nevertheless, although helping to clarify the scope of the subject, equally lead to limiting the international inspection and control mechanisms to a particular type of international organization, viz. the “international and regional development banks.” From this a second question emerges, viz. are the international inspection and control mechanisms dispute settlement mechanisms specific to this type of international organization or may they be used in other areas and activities regulated by international law?

The answer to the question about the potential scope of application of the international inspection and control mechanisms necessarily requires a brief presentation of the dispute settlement mechanisms that have been included in this category, namely those that have been created over the last two decades by international and regional development banks.

### III A Brief Presentation of the International Inspection and Control Mechanisms Created in International and Regional Development Banks

As an object of study and analysis at an international law level<sup>7,8</sup> the international inspection and control mechanisms are a relatively recent self-control

7 On this matter, in general, in addition to *Manual...*, cit., pp. 461–498; see Paul J. Nelson, ‘Transparency mechanisms at the multilateral development banks’, *World Development*, vol. 29, 2001, pp. 1835–1847; Daniel D. Bradlow, ‘Private complaints and international organizations. The comparative study of the independent inspection mechanisms in international Financial Institutions’, *Georgetown Journal of International Law*, vol. 36, 2005, pp. 403–494; Richard E. Bissell and Suresh Nanwani, ‘Multilateral development bank accountability mechanisms: Developments and challenges’, *Manchester Journal of International Economic Law*, vol. 6, 2009, pp. 2–55; and Katarína Chovancová, ‘Inspection mechanisms of international development banks’, *The Comparative Law Yearbook of International Business*, vol. 33, 2011, pp. 495–549.

8 A broader perspective, including “export promotion agencies” as the Japan Bank for International Cooperation, the Nippon Export and Investment Insurance, the Export Development Canada and the US Overseas Private Investment Corporation can be found on Accountability Counsel (Natalie Bridgeman Fields), *Accountability Resource Guide. Tools for*

mechanism that can be found in the functioning of the international and regional development banks.<sup>9</sup> In successive order the following will be presented: a) the Inspection Panel of the World Bank; b) the Office of the Compliance-Advisor/Ombudsman (CAO) of the International Finance Corporation and the Multilateral Investment Guarantee Agency; c) the Accountability Mechanism of the Asian Development Bank; d) the Independent Consultation and Investigation Mechanism of the Inter-American Development Bank; e) the Independent Review Mechanism of the African Development Bank; and, finally f) the Project Complaint Mechanism of the European Bank for Reconstruction and Development. Taking into account their priority and the fact that they have been a reference model for other mechanisms of dispute settlement, the following brief notes will give greater attention to the Inspection Panel of the World Bank and to the Office of the Compliance-Advisor/Ombudsman (CAO) of the International Finance Corporation and the Multilateral Investment Guarantee Agency.

#### a *Inspection Panel of the World Bank*<sup>10</sup>

The Inspection Panel was established on 22 September 1993 by the Board of Executive Directors of the World Bank in two resolutions with identical content,

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*Redressing Human Rights & Environmental Violations by International Financial Institutions, Export Promotion Agencies & Private Corporate Actors*, version 7.1., July 2012, available at <http://www.accountabilitycounsel.org/wp-content/uploads/2012/04/ARG-7.1.pdf>.

- 9 In 2010, following the experience initiated by the Inspection Panel of the World Bank, the European Investment Bank created a Complaints Mechanism, with the objective of “providing the public with procedures enabling the alternative and pre-emptive resolution of disputes between the public and the EIB [European Investment Bank] Group” (*European Investment Bank Complaints Mechanism Operating Procedures*, August 2013, p. 3).
- 10 About the Inspection Panel of the World Bank, in addition to the literature cited in Mackenzie, Roman, Shany, and Sands, *Manual...*, cit., p. 477, see also Daniel D. Bradlow, ‘International Organizations and Private Complaints: the case of the World Bank Inspection Panel’, *Virginia Journal of International Law*, vol. 34, 1994, pp. 553–614, Daniel D. Bradlow e Sabine Schlemmer-Schulte, ‘The World Bank’s New Inspection Panel: a constructive step in the transformation of the international legal order’, *Zeitschrift für Ausländisches Öffentliches Recht und Völkerrecht*, vol. 54, 1994, pp. 392–415; the studies about this subject compiled in Gudmundur Alfredsson and Rolf Ring (editors), *The Inspection Panel of the World Bank. A different complaints procedure*, Martinus Nijhoff, 2001, and in Dana Clark, Jonathan Fox e Kay Treacle (editors), *Demanding Accountability. Civil-Society Claims and the World Inspection Panel*, Rowman & Littlefield Publishers, 2003; Andria Naudé Fourie, *The World Bank Inspection Panel and Quasi-Judicial Oversight. In search of the ‘Judicial Spirit’ in Public International Law*, Eleven International Publishing, 2009, and ‘The World Bank Inspection Panel’s normative potential: a critical assessment, and a restatement’, *Netherlands International Law Review*, vol. 59, pp. 199–234; and

of the IBRD—International Bank for Reconstruction and Development—and the IDA—International Development Association, subsequently modified in 1996 and in 1999.

The Inspection Panel is an independent entity within the structure of the IBRD and the IDA, created with the aim of providing persons allegedly affected by projects financed by the World Bank with a means to make complaints about the damages that are caused to them. After the submission of a written complaint, the Panel Inspection will undertake a research study in order to determine whether the damage alleged by the parties “has totally or partially resulted from failure of the Bank to comply with its policies and procedures, including social and environmental safeguard policies and procedures, during design, appraisal and implementation of Bank-financed projects”.<sup>11</sup>

The Inspection Panel is composed of three members, appointed for non-renewable five-year terms. In order to ensure their impartiality, members of the Inspection Panel may not have been employed by the World Bank within two years prior to their appointment to the Inspection Panel, or come to be contracted by the World Bank in the year following the termination of their mandate. The activity of the Inspection Panel is supported by a Secretariat and independent experts hired to pursue specific tasks.

The Inspection Panel process takes place in four separate phases:<sup>12</sup>

- i) firstly, a request for an investigation shall be made, about which a decision of admissibility or inadmissibility should be made within fifteen business days;
- ii) secondly, there will be a preliminary assessment of the admitted complaint, about which a recommendation on whether or not a thorough investigation on the matter should be conducted will be sent to the Board of Executive Directors of the World Bank;<sup>13</sup>

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Eugenia López-Jacoiste, ‘El control cuasi jurisdiccional del Panel de Inspección del Banco Mundial’, *Anuario Español de Derecho Internacional*, vol. 29, 2013, pp. 111–164.

11 *The Inspection Panel at the World Bank. Operating Procedures. April 2014*, p. 6.

12 According to the website of the Inspection Panel, the evolution of processes takes into account the following phases and sub-phases: i) registration of request; ii) management response; iii) eligibility report; iv) board approval; v) investigation ongoing; vi) investigation report; vii) management report; viii) board discussion; ix) follow up and progress report; x) process completed.

13 In the “confirmation of eligibility and technical recommendation on whether to Investigate”, the Inspection Panel comes to balancing the following six criteria:

- iii) thirdly, a thorough investigation will be conducted on the issue which will culminate in the preparation of a report, in the elaboration of recommendations to be considered by the Board of Executive Directors of the World Bank,<sup>14</sup> and with the decision that this body will accept the recommendations made by the Inspection Panel members;
- iv) and, finally, fourthly, there will be an evaluation by the Inspection Panel of the measures taken in accordance with the “action plan” approved by the Board of Executive Directors of the World Bank.

According to the World Bank, the Inspection Panel intends to fulfill two distinct functions:<sup>15</sup> on the one hand, it “provides a forum for people, including those who are often poor and vulnerable, to seek recourse for harm which they believe result from Bank-supported operations”; and, on the other hand, “provides an independent and impartial assessment of claims about harm and related non-compliance with Bank policies as a check-and-balance for the Board and other concerned stakeholders”.

The relevance of the Inspection Panel mission in assessing complaints concerning projects financed by the World Bank is shown by the assessment of ninety-nine complaints received by the end of 2014.<sup>16</sup>

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i) criterion (a): “The affected party consists of two or more persons with common interests and concerns who are in the Borrower’s territory”; ii) criterion (b): “The request asserts in substance that a serious violation by the Bank of its operational policies and procedures has or is likely to have a material adverse effect on the requester”; iii) criterion (c): “The Request asserts that its subject matter has been brought to the attention of Management and that, in the Requesters’ view, Management has failed to respond adequately demonstrating that it has followed or is taking steps to follow the Bank’s policies and procedures”; iv) criterion (d): “The matter is not related to procurement”; v) criterion (e): “The related loan has not been closed or substantially disbursed”; and iv) criterion (f): “The Panel has not made a recommendation on the subject matter or, if it has, that request does not assert that there is new evidence or circumstances not known at the time of the prior request” (*The Inspection Panel...*, cit., pp. 15 e 16).

14 According to paragraph 13 of 1999 Clarification of the Board’s Second Review of the Inspection Panel, “[t]he Panel will discuss in its written report only those material adverse effects, alleged in the request, that have totally or partially resulted from a serious Bank failure of compliance with its policies and procedures”.

15 *The Inspection Panel...*, p. 6.

16 About the activity of the Inspection Panel of the World Bank, see the data available on the website of the Inspection Panel; and Andria Naudé Fourie, *The World Bank Inspection Panel Casebook*, Eleven International Publishing, 2014.

**b**      *Office of the Compliance-Advisor/Ombudsman (CAO) of the International Finance Corporation and the Multilateral Investment Guarantee Agency*

The Office of the Compliance-Advisor/Ombudsman (CAO) of the International Finance Corporation and the Multilateral Investment Guarantee Agency was created in 1999, taking into account that the control of the activities of these two entities was not part of the powers of the Inspection Panel of the World Bank, despite their being part of the World Bank Group.

The CAO is an independent recourse and accountability mechanism in the framework of the IFC's and MIGA's structure, chaired by the Compliance Adviser/Ombudsman, which aims to assess the environmental and social effects of projects that are pursued by those two entities. In developing its activity, the CAO "provides communities and individuals with access to a grievance mechanism that offers redress for negative and/or social impacts associated with IFC/MIGA projects. This includes impacts related to business and human rights in the context of the IFC Policy and Performance Standards on Environmental and Social Sustainability".<sup>17</sup>

Three distinct functions were assigned to the CAO:

- i) "Dispute Resolution role: in responding to complaints, CAO attempts to resolve the issues raised using a flexible, collaborative, problem-solving approach. The focus of CAO's Dispute Resolution role is on accessing directly those individuals and/or communities affected by the project and helping them, the client, and other relevant stakeholders resolve complaints, ideally by improving environmental and social outcomes on the ground";<sup>18</sup>
- ii) "Compliance role: CAO oversees compliance investigations of the environmental and social performance of IFC and MIGA, particularly in relation to sensitive projects, to ensure compliance with policies, standards, guidelines, procedures, and conditions for IFC/MIGA involvement, with the goal of improving IFC/MIGA environmental and social performance";<sup>19</sup>

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17 *Operational Guidelines CAO*, [2013], p. 4. In the *CAO Operational Guidelines* is outlined that, p. 4, "CAO has no authority with respect to judicial processes. CAO is not an appeals court or a legal enforcement mechanism, no is CAO a substitute for international court systems or court systems in host countries".

18 *CAO Operational...*, cit., p. 4.

19 *CAO Operational...*, cit., p. 5.

- iii) “Advisory role: CAO is a source of independent advice to the President and the senior management of IFC and MIGA. Advice is based on insights gathered from CAO’s dispute resolution and compliance interventions and is focused on broader environmental and social policies, guidelines, procedures, strategic issues, trends, and systematic issues based on the experiences gained through its case work, with the goal of fostering systemic improvements in IFC/MIGA.”<sup>20</sup>

The procedures for dispute resolution and compliance, being relevant for the resolution of conflicts, have a common initial phase during which: i) there will be the submission of a complaint that will be subject to an admissibility assessment within fifteen business days;<sup>21</sup> and ii) a preliminary assessment of the complaint by the CAO dispute resolution experts will be made, within one hundred and twenty working days, in order to consider whether there is justification for opening a dispute resolution process or a compliance appraisal.

The opening of a dispute resolution process is the result of a voluntary decision of the parties involved in the project. The main objective of this process is to achieve a solution to the dispute that may be satisfactory to all concerned. The dispute resolution process can be carried out by: i) facilitation and information sharing; ii) joint fact-finding;<sup>22</sup> iii) dialogue and negotiation; or iv) mediation and conciliation. Compliance with the agreement reached amongst the parties involved in the dispute can be monitored by the CAO.

The mandate of the CAO at the compliance level aims to assess the performance of the IFC and MIGA in the environmental and social fields, so that whether “the outcomes of the business activity or advice are consistent with the intent of the relevant policy provisions” are evaluated.<sup>23</sup> In this area, the performance of the CAO is divided into two parts, compliant appraisal and

<sup>20</sup> *CAO Operational...*, cit., p. 5.

<sup>21</sup> The complaint is likely to be accepted if: i) “[t]he complaint pertains to a project that IFC/MIGA is participating in, or is actively considering”; ii) “[t]he issues raised in the complaint pertain to CAO’s mandate to address environmental and social impacts of IFC/MIGA projects”; e iii) “[t]he complainant is, or may be, affected by the environmental and/or social impacts raised in the complaint” (*CAO Operational...*, cit., p. 13).

<sup>22</sup> According to the *CAO Operational...*cit., p. 18, “[j]oint fact-finding is an approach that encourages the parties to jointly agree on the issues to be examined; the methods, resources, and people that will be used to conduct the examination; and the way that information generated will be used by the parties”.

<sup>23</sup> *CAO Operational...*, cit., p. 22.

compliance investigation. The purpose of compliant appraisal, on the one hand, “is to ensure that compliance investigations are initiated only for those projects that raise substantial concerns regarding environmental and/or social outcomes, and/or issues of systemic importance to IFC/MIGA”.<sup>24</sup> The purpose of the investigation compliance, on the other hand, is to “objectively obtaining and evaluating evidence to determine whether environmental and social activities, conditions, management systems, or related information are in conformance with the compliance investigation criteria”. The compliance investigation criteria include “IFC/MIGA policies, Performance Standards, guidelines, procedures, and requirements whose violation might lead to adverse environmental and/or social outcomes”.<sup>25</sup>

**c      *Accountability Mechanism of the Asian Development Bank***<sup>26</sup>

The Accountability Mechanism of the Asian Development Bank was established in 2003 and revised in 2012. It replaced the Inspection Function, in operation since 1995, created in order to assess compliance of projects financed by the Asian Development Bank with its operational policies and procedures.<sup>27</sup>

The Accountability Mechanism as their fundamental aim to “provide an independent and effective forum for people adversely affected by ADB-assisted projects to voice their concerns and seek solutions to their problems, and to request compliance review of the alleged non-compliance by the ADB with its operational policies and procedures that may have caused, or risk likely to cause, them direct and material harm”.<sup>28</sup>

The Accountability Mechanism, as amended in 2012, was organized in order to: “(i) increase ADB’s [Asian Development Bank] development effectiveness and project quality; (ii) be responsive to the concerns of project-affected people and fair to all stakeholders; (iii) reflect the highest professional and technical standards in its staffing and operations; (iv) be as independent

24    *CAO Operational...*, cit., p. 22.

25    *CAO Operational...*, cit., p. 23.

26    About the Inspection Policy of the Asian Development Bank, see Eugenia McGill, “The Inspection Policy of the Asian Development Bank”, in Gudmundur Alfredsson and Rolf Ring (editors), *The Inspection Panel of the World Bank. A different complaints procedure*, Martinus Nijhoff, 2001, pp. 191–207.

27    In accordance with the *Accountability Mechanism Policy in 2012*, 2012, p. 2, “[f]rom 1995 to 2003, ADB received eight requests for inspection, of which six were deemed ineligible”. During the first version of the Accountability Mechanism, from 2004 to 2011, the mechanism received 39 complaints, of which only 13 were deemed eligible (*Accountability Mechanism...*, cit., p. 48).

28    *Accountability Mechanism...*, cit., p. 21.

and transparent as possible; (v) be cost-effective and efficient; and (vi) be complementary to other supervision, audit, quality control, and evaluation systems at ADB”.<sup>29</sup>

The Accountability Mechanism pursues two distinct functions: i) a problem solving function, intended to “respond to problems of local people affected by ADB-assisted projects through a range of informal and flexible methods”;<sup>30</sup> through consultive dialogue, information sharing, joint fact-finding, and mediation; and ii) the compliance review function, in order to “investigate alleged noncompliance by ADB with its operational policies and procedures that has caused, or is likely to cause, direct and material harm to project-affected people”.<sup>31</sup>

**d** *Independent Consultation and Investigation Mechanism of the Inter-American Development Bank*<sup>32</sup>

The Independent Consultation and Investigation Mechanism of the Inter-American Development Bank was created in 2010 and revised in 2014. It replaced the Independent Inspection Mechanism, in operation since 1994, which had been created in order to increase transparency, accountability, and efficiency of Inter-American Development Bank.

The objectives of the Independent Consultation and Investigation Mechanism are:<sup>33</sup> to “[p]rovide a mechanism and process independent of Management in order to investigate allegations by Requesters of Harm produced by the Bank’s failure to comply with its Relevant Operational Policies in Bank-Financed Operations”; “[p]roviding information to the Board regarding such investigations”; and “[b]e a last-resort mechanism for addressing the concerns of Requesters, after reasonable attempts to bring such allegations to the attention of Management have been made”.

29 *Accountability Mechanism...*, cit., p. 21.

30 *Accountability Mechanism...*, cit., p. 21.

31 *Accountability Mechanism...*, cit., p. 21.

32 About the Independent Investigation Mechanism of the Inter-American Development Bank, see Gay Davies Miller, “The Independent Investigation Mechanism of the Inter-American Development Bank”, in Gudmundur Alfredsson and Rolf Ring (editors), *The Inspection Panel of the World Bank. A different complaints procedure*, Martinus Nijhoff, 2001, pp. 209–217; Mackenzie, Romano, Shany and Sands, *Manual...*, cit., pp. 478–481. About the Independent Consultation and Investigation Mechanism, see Victoria Elliott, Elena Costas-Perez, Karl Truong, William Partridge e Maria Valeria Junho Pena, *Evaluation of the Independent Consultation and Investigation Mechanism (ICIM)*, 2012.

33 *Policy of the Independent Consultation and Investigation Mechanism. Approved Version, December 17, 2014*, p. 1.

The Independent Consultation and Investigation Mechanism activities are developed through: i) a “Consultation Phase: This phase provides an opportunity for the Parties to address the issues raised in the Request in a voluntary, flexible and collaborative manner”; and ii) a “Compliance Review Phase: This phase offers an investigative process related to the issues raised in the Request to establish whether the Bank failed to comply with any of its Relevant Operational Policies<sup>34</sup> and whether that has caused Harm to the Requesters”.<sup>35</sup>

The Consultation Phase “is intended to be flexible, consensus-based, and tailored to the specific issues raised in the Request related to policy noncompliance. The methods to be used will depend on factors such as urgency, type of Harm involved, remedies sought and the likelihood that the exercise will have a positive outcome. These methods include but are not limited to: information gathering, joint fact-finding, consultation, negotiation, and mediation”.<sup>36</sup> The Compliance Review Phase, in turn, is “fact-finding in nature. It is not a judicial process and is not designed to establish guilt or innocence, or to adjudicate blame among the various Parties involved. The ICIM [Independent Consultation and Investigation Mechanism] only has a mandate to investigate allegations of noncompliance with Relevant Operational Policies in Bank-Financed Operations. It does not have a mandate to investigate actions of governments, public entities, local authorities, Borrowers, Executing Agencies or other lenders, sponsors or investors in connection with Bank-Financed Operation”.<sup>37</sup>

#### e *Independent Review Mechanism of the African Development Bank*

The Independent Review Mechanism (IRM) of the African Development Bank in operation since 2006, under the Compliance Review and Mediation Unit, was revised in 2009.<sup>38</sup>

The IRM was established “for the purpose of providing people adversely affected by a project financed by the Bank, the Fund, the Nigeria Trust Fund

34 In the Relevant Operational Policies, the following areas are included in accordance with the *Policy of the Independent...*, p. 6: “Access to Information (OP-102)”, “Environment and Safeguards Compliance (OP-703)”, “Disaster Risk Management (OP-708)”, “Public Utilities (OP-708)”, “Involuntary Resettlement (OP-710)”, “Gender Equality in Development (OP-761)” e “Indigenous Peoples (OP-765)”.

35 *Policy of the Independent...*, cit., p. 2.

36 *Policy of the Independent...*, cit., p. 8.

37 *Policy of the Independent...*, cit., p. 10.

38 About the activities of the Independent Review Mechanism, see *The Independent Review Mechanism. Annual Report 2013* [2014].

and other Special Funds administered by the Bank (collectively the ‘Bank Group’) with an independent mechanism through which they can request the Bank Group to comply with all its own policies and procedures”.<sup>39</sup>

The mandate of the IRM covers compliance review and problem-solving functions. In accordance with the first, “the IRM will, in the case of Bank Group-financed sovereign guaranteed projects, focus on issues of non-compliance by an institution within the Bank Group with any of its operational policies and procedures in respect to the design, implementation or supervision of such project, and, in the case of private sector and/or non-sovereign guaranteed Bank Group-financed projects, on social and environmental compliance”.<sup>40</sup> For its part, “[t]he problem-solving function will be used where complaints or grievances can also, or alternatively, benefit from problem-solving techniques to assist in trying to resolve the underlying issues. These techniques will include independent fact-finding, mediation, conciliation, dialogue facilitation taking into consideration best customary practices for handling complaints”.<sup>41</sup>

#### f *Project Complaint Mechanism of the European Bank for Reconstruction and Development*<sup>42</sup>

The Project Complaint Mechanism (PCM) of the European Bank for Reconstruction and Development was established in 2010, and it currently works in accordance with the rules adopted in May 2014.<sup>43</sup> It replaced the Independent Recourse Mechanism that had been established in 2003.

The mandate of the PCM is pursued through the two functions, a Problem-solving function, and a Compliance Review function. The objective of the first is “restoring a dialogue between the Complainant and the Client to resolve the issue(s) underlying a Complaint without attributing blame or fault”,<sup>44</sup> while the second “seeks to determine whether or not the EBRD has complied with a Relevant EBRD Policy in respect of an approved Project”.<sup>45</sup>

39 *IRM Operating...*, cit., p. 1.

40 *IRM Operating...*, cit., p. 1.

41 *IRM Operating...*, cit., p. 1.

42 About the Independent Recourse Mechanism About, see Mackenzie, Romano, Shany and Sands, *Manual ...*, cit., pp. 493–496.

43 In accordance with the *Project Complaint Mechanism. Annual Report 2013*, p. 4, “[s]ince its launch in 2010 the PCM has seen a dramatic increase in the number of requests received (...). During the last three years, the PCM received 64 letters or complaints, of which 14 were registered, six suspended for registration and 44 deemed ineligible”.

44 *Project Complaint Mechanism (PCM). Rules of Procedure. As approved by the Board of Directors at its Meeting on 7th May 2014 (in force as of 7 November 2014)*, p. 1.

45 *Project Complaint...*, cit., p. 1.

It must be noted that “[t]he fact that a Complaint has been registered and/or found eligible for either a Compliance Review and/or a Problem-solving Initiative will not, of itself, have the effect of suspending the Bank’s interest in the Project. However, if at any time during the processing of a Complaint, the PCM Officer believes that serious, irreparable harm will be caused by the Bank’s continued processing of the Project or disbursements in respect of the Project, the PCM Officer may make an interim recommendation to suspend further Bank processing of the Project or, if possible, disbursements in respect of the Project”.<sup>46</sup>

#### IV Is the UEFA Club Financial Control Body a Manifestation of the Use of *International Inspection and Control Mechanisms* by Entities Other than International and Regional Development Banks?

This brief presentation of the existing international inspection and control mechanisms in international and regional development banks clearly leads towards a negative answer to the question formulated above. Both by virtue of the objectives that they intend to achieve and by the methods they use in the pursuit of their activities, these mechanisms of conflict resolution are not necessarily a specificity of international and regional development banks.<sup>47</sup>

From this answer follows a final question to finish this introduction, viz. can the UEFA Club Financial Control Body be considered to be a manifestation of the use of international inspection and control mechanisms by entities other than international and regional development banks?

In accordance with paragraph 1 of Article 3 of the *Procedural rules governing the UEFA Club Financial Control Body* of 2014, it is possible for the UEFA Club Financial Control Body (CFCB) to “impose disciplinary measures as defined in these rules in the event of non-fulfilment of the requirements set out in the UEFA Club Licensing and Financial Fair Play Regulations” [subparagraph d)], and to “decide on cases relating to club eligibility for the UEFA club competitions to the extent provided for by the regulations governing the competitions in question” [paragraph e)]. It should be noted that, under Article 6 of the *Procedural rules*

<sup>46</sup> *Project Complaint...*, cit., p. 6.

<sup>47</sup> One manifestation of the potential of these mechanisms to be created in international entities other than international and regional development banks is the inclusion of the Office of Audit and Investigations (OAI), established in the United Nations Development Program, on the Independent Accountability Network.

aforementioned, “[t]he members of the CFCB are independent. They are bound exclusively by the UEFA Statutes, rules and regulations and the law”.

The response to the above question will certainly be provided by the contribution of Chairperson of the UEFA Club Financial Control Body (CFCB), José Narciso da Cunha Rodrigues, which will follow this brief introduction.

To conclude, in order to stimulate future debate, it will be useful to have highlighted already the fact that the use of the Union of European Football Associations (UEFA) and the UEFA Club Financial Control Body for the proposed test cannot ignore a previous questioning about the international legal nature of these bodies and the sources of law they employ, taking into account that the international effects of their activities are indisputable and permanently reported.