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Original citation:
'Corruption in World Bank-financed development projects: A phenomenon-focused examination', in *Corruption in the Global Era: Causes, Sources and Forms of Manifestation*, ed. by Lorenzo Pasculli and Nicholas Ryder, pub 2019 (ISBN 9780367177768)

Publisher: Routledge

This is a **pre-copyedited, author-produced PDF of a chapter published** in

Lorenzo Pasculli and Nicholas Ryder (eds.) *Corruption in the Global Era: Causes, Sources and Forms of Manifestation*, Abingdon: Routledge, 2019, pp. 258-276

The official and published version of the chapter is available at:

https://www.routledge.com/Corruption-in-the-Global-Era-Causes-Sources-and-Forms-of-Manifestation/Pasculli-Ryder/p/book/9780367177768

Corruption in World Bank-financed development projects: a phenomenon-focused examination

Dr Costantino Grasso[1]

Introduction

Multilateral development banks (MDBs) are supranational institutions set up by sovereign states, which are their shareholders. Traditionally, the term MDB referred to the World Bank, which operates at the global level, and other four institutions acting at the regional level: the African Development Bank (AfDB), the Asian Development Bank (AsDB), the European Bank for Reconstruction and Development (EBRD), and the Inter-American Development Bank (IDB). However, two new MDBs, which are outside the sphere of influence of the World Bank Group, have been recently established: the New Development Bank (NDB) and the Asian Infrastructure Investment Bank (AIIB). The former has been jointly created by the BRICS countries (Brazil, Russia, India, China, and South Africa), while the latter has been initiated by China and jointly founded by fifty-seven member countries from Asia (Wang, 2017, p. 114). Among the traditional MDBs, the World Bank Group (WBG) can be considered the leading multilateral development bank (MDB) vastly overshadowing the others. In its fiscal year 2018, the World Bank Group commitments to help developing countries take on poverty and boost opportunity reached nearly $64 billion in loans, grants, equity investments and guarantees (World Bank, 2018).

Differently from ordinary financial institutions, the World Bank and the other MDBs lend money to states (borrowers) to allow them to carry out key development projects. In turn, the borrowing states execute those projects, which involve the purchase of goods, works, and services through their domestic public procurement systems. As a result, such a "triangular procurement system" is denoted by the absence of direct contact between the

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subject that is lending the money and the private entity that receives it. The presence of a public intermediary, which is commonly a public authority of the state that is supposed to benefit from the lending, represents a disconnection between the lender and the public procurement bidder. As it will be argued, such a peculiar element inherently hinders the efforts made by the World Bank to fight against corruption within its funded development projects.

In order to counter corruption and other illicit conducts within its projects, the World Bank has developed an independent sanctions system, which represents a powerful tool that can be used to help ensure that the granted funds are actually used to benefit developing countries. This sanctions regime, although extremely valuable to fight corruption, is currently characterized by a limited level of transparency and affected by structural issues such as the lack of democratic legitimacy, the incompleteness of the related legal frameworks, and the absence of effective due process safeguards (Manacorda & Grasso, 2018, p. 35).

In any case, over the course of the last decade, the World Bank has increasingly focused on fostering budget transparency through its lending operations. Although still limited, such increased level of transparency, especially in relation to the imposition of sanctions, has proved to be extremely relevant to the study of corruption within the World Bank-financed development projects. In that regards, the statement made in 2011 by the World Bank President, Robert Zoellick, appears clearly emblematic of such new approach:

> "We will encourage governments to publish information, enact Freedom of Information Acts, open up their budget and procurement processes, build independent audit functions, and sponsor reforms of justice systems. We will not lend directly to finance budgets in countries that do not publish their budgets or, in exceptional cases, at least commit to publish their budgets within twelve months." (World Bank, 2011).

This chapter aims at illustrating how the World Bank's sanctions system has brought to light the way in which corruption operates within its projects and the weak spots that have been identified so far in the fight against such a criminal phenomenon. In order to do that, this chapter proceeds in five parts, which includes this introduction, Part I. Then, Part II, "The development of the World Bank's policy against corruption," examines how the World Bank's anti-corruption policy has evolved over the course of the last two decades. Part III, "The World Bank's Sanctions System," introduces the innovative sanctions system developed by the multilateral development bank and briefly illustrates its key procedural and substantive aspects. Part IV, "Case law analysis of Sanctions Board's decisions," illustrates the ways in which corruption operates within World Bank's projects through an examination of select decisions taken by its quasi-judicial body. Finally, Part V concludes by offering a critical analysis of the case law studies carried out in Part IV.

The development of the World Bank's policy against corruption

The use of World Bank's funds for illicit purposes, including allocations for cronyism and politically driven investments (e.g., military spending), has been a longstanding and

contentious issue, which arose as a major problem during the last 20 years. However, for a long time, World Bank officials consciously avoided any use of the word corruption. The criminal phenomenon was considered a domestic affair that was beyond the World Bank's mandate. This inertia in confronting corrupt practices in the Bank-financed projects was based on a provision of the Articles of Agreement,[2] which specifically prohibits staff members from making lending decisions on the basis of political considerations. Such a non-political mandate is one of the most distinguishing features of the World Bank. Specifically, Article IV, section 10 expressly states that:

> "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 to achieve the purposes stated in Article I." (IBRD, 1989).

The rationale behind this provision is that, being the borrowers also members of the financial institution, they should be allowed to maintain at least some appearance of sovereignty irrespective of the various states' debt situation. In 1992, a report clarified the scope of this limitation, specifying that the Bank is not supposed to interfere in the partisan politics of a member or influence a borrowing member's political orientation or behaviour (Adams, 2003, p. 80).

However, since its outset, such an anti-interference stance has often been the subject of much controversy. This is not surprising taking into consideration that the World Bank can be considered as an entity having an inherently political nature. Suffice it to say that the multinational development bank has historically acted as a major player in both Cold War and post-Cold War politics and that its voting system is influenced by its largest shareholders, which are the world's most powerful nations. It is no coincidence that the financial institution is headquartered in Washington, D.C., and that there is a longstanding tradition of nominating an American citizen as its president. As a matter of fact, the World Bank's vulnerability to interference from the U.S. represents a well-known characteristic of this supranational organisation (Marquette, 2001. p. 5). In particular, it is well known for making choices grounded on political reasons and granting policy-linked loans and for its efforts to influence the behaviour of borrowing governments (Kapur, Lewis and Webb, 1997, p. 449).

Then in the 1990s, the World Bank's passive approach to corruption became increasingly untenable and, consequently, things started to change. At the global level, the process of economic globalization created an extremely competitive market environment that progressively led to a special attention to the risks, costs, and consequences of bribery, graft, and other forms of corruption in international businesses. The reason is that such a globalized market, where only the fittest survive, inherently requires a trading system

[2] The multilateral development bank was founded on the grounds of the Articles of Agreement negotiated at Bretton Woods in 1944 and opened its doors for business on 25 June 1947. The Articles of Agreement outline the conditions of membership and the general principles the financial institution has to follow in its business operations.

characterized by honesty, transparency, and fair dealing (Grasso, 2017, p. 242). In such a situation, the United States, which had adopted the Foreign Corrupt Practices Act,[3] found themselves in a difficult state of affairs in that their multinational enterprises had to compete fiercely in a globalized economy where non-American firms had still the possibility to bribe in order to obtain advantages in the conduct of business with impunity. As a reaction to the *de facto* competitive disadvantage suffered by the American corporations, intense pressure was brought to bear on the global community by the United States to foster the adoption of anti-corruption regulations all over the world (ibid., p. 243). Such pressure was exerted, *inter alia*, through the 1997 OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. As an example of how this influence was exercised in practical terms, it is possible to examine the following excerpts from the OECD Report of 2008 on the United Kingdom compliance with the provisions of the convention:

> "The Working Group is particularly concerned that the UK‘s continued failure to address deficiencies in its laws on bribery of foreign public officials and on corporate liability for foreign bribery has hindered investigations […] The Group also strongly regrets the uncertainty about the UK‘s commitment to establish an effective corporate liability regime in accordance with the Convention, as recommended in 2005, and urges the UK to adopt appropriate legislation as a matter of high priority […] The Working Group analysed the law on the liability of legal persons in the UK. It found that only one company has ever been prosecuted for bribery since the UK adopted bribery legislation in 1906 and the conviction was overturned on appeal; the doctrinal requirements for corporate liability preclude any likelihood of liability for most companies; and the law was such as to dissuade in practice any attempts to prosecute." (OECD, 2008, p. 19).

Such a pressure on the British government eventually led to the adoption of the Bribery Act 2010 and the introduction of the offence of "Failure of commercial organisations to prevent bribery,"[4] which has established a criterion of attribution of corporate criminal liability for bribery characterised by a high degree of effectiveness. (Grasso, 2016, p. 389).

With this being said, it is not surprising that in the late 1990s the World Bank launched its own Governance and Anti-Corruption (GAC) strategy to fight against corruption in Bank-financed operations and support clients to strengthen their corruption fighting capacity. The formal rationales behind such a change were identified, on the one hand, in the relationship between corruption and poor governance, and on the other, in the general acceptance of the proposition that corruption has adverse effects on development and hinders the World Bank’s efforts aimed at reducing poverty (World Bank, 2007, p. i).

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[3] The United States adopted the Foreign Corrupt Practices Act in 1979 as a response of the Watergate scandals. It is a heavy anti-corruption piece of legislation aimed at criminalizing American firms that perpetrate corrupt practices abroad.

[4] The offence, which is provided by section 7 of the Bribery Act 2010, does not replace or remove direct corporate liability for bribery, but is conceived as a new form of corporate liability for mission that does not require knowledge, intention or recklessness and occurs when the commercial organisation has failed to prevent corrupt practices within its business operations.

The fact that the then President of the financial institution, James D. Wolfensohn, during the annual meeting of the Bank and the International Monetary Fund of 1996, declared "we need to deal with the cancer of corruption" is emblematic of the fact that fighting corruption had finally moved to the forefront of the Bank's political agenda (Bhargava, 2006).

Among the anticorruption measures developed by the World Bank to counter corrupt activities within its own projects, it is possible to distinguish between the ones that operate *ex ante*, mainly having a preventive function, and the ones that are applied *ex post*, which are represented by the sanctions that the Bank might impose through its sanctions process (Manacorda & Grasso, 2018, p. 15).

The former have been developed to mitigate the effects of the above-mentioned absence of a direct contact between the World Bank and the private entities that receive its funds to carry out the development projects, which is the characteristic of the "triangular procurement system" established by the multinational development bank. In this regard, the fundamental rule applicable to every project financed by the World Bank is that it is the borrowing Member State that is responsible for the procurement under a loan, not the financial institution itself. As a result, in the procurement process, the Bank plays a merely supportive role aimed at preventing the occurrence of corrupt practices, which is performed through the issuance of its guidelines, the offering of training sessions, and the assistance that its staff provides to borrowers (World Bank, 2003, p. xii).

One of the most relevant issues raised by such a triangular procurement system is represented by the lack of knowledge chronically experienced by World Bank's officials about language, culture, and socioeconomic structures of the societies in which their development projects are supposed to operate. Due to such a structural deficiency, the World Bank proved to be inherently incapable of managing and monitoring its development project so to effectivity prevent the occurrence of corrupt practices. In order to solve such an issue, the World Bank has recently introduced the so-called Political, Economic, Social, Technology, Legislative and Environment Analysis (PESTLE), which consists in an examination of the borrower's operating and business environmental influences, and aims at providing information and intelligence to guide the overall design of the procurement approach (World Bank, 2016, p. 12). However, the results of such analyses do not appear to have been made available to the wider public yet, so although it sounds logically coherent, it is not currently possible to assess the validity of the initiative.

The World Bank's Sanctions System

As regards the measures that aim at countering corrupt activities through general and specific deterrence, the World Bank has introduced an independent sanctions system through which it may impose sanctions on individuals and legal entities that are involved in illicit practices within its development projects (Manacorda & Grasso, 2018, p. 20). Although a comprehensive analysis of the sanctions system falls beyond the scope of this chapter, it follows a brief illustration of its key procedural and substantive aspects.

In particular, the World Bank has identified five fundamental sanctionable practices the perpetration of which may be punished through the sanctions process. They are: corrupt

practice, fraudulent practice, collusive practice, coercive practice, and obstructive practice. Taking into consideration that this chapter is characterised by a special focus on corruption, it is the notion of "corrupt practice" that assumes here greater relevance. Under the Bank's Anti-Corruption Guidelines, a corrupt conduct consists in "the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party" (World Bank, 2006, para 7(a)). It has also to be highlighted that, due to the above-mentioned World Bank's anti-corruption stance, the Bank's investigators tend to concentrate their efforts to fight against such a criminal phenomenon. It is not surprising that of 63 external cases under investigation at the end of fiscal year 2017, 31 involved allegations of corruption (World Bank, 2017, p. 23).

All allegations of sanctionable practices in Bank-financed projects are referred to the Integrity Vice Presidency (INT), which is the World Bank's investigative body. The Integrity Vice Presidency might receive complaints from all over the world and from a variety of sources such as Bank staff, contractors or other bidders, government officials, concerned citizens, employees of NGOs, the media, other multilateral development banks, and also from anonymous sources[5] (ibid., p. 23).

At the end of the investigation, if the INT believes that there is sufficient evidence that a firm or individual, formally called "respondent," has engaged in a sanctionable practice, it launches a sanctions case by submitting a Statement of Accusations and Evidence to a Suspension and Debarment Officer (SDO), who is a Bank official and acts as a gatekeeper and legal advisor to the investigative body. As specified in the World Bank's official documentation, the SDO performs two essential functions: first, he or she provides for a mechanism for temporary suspension pending the outcome of the sanctions proceedings; and second, he or she increases efficiency by providing for the early disposition of sanctions cases that do not result in appeals (World Bank, 2015, p. 9). If the SDO finds that the accusations are supported by sufficient evidence, he or she issues a Notice of Sanctions Proceedings recommending an appropriate sanction to be imposed on each respondent (Manacorda & Grasso, 2018, pp. 70-73).

Among the sanctions identified in the Bank's Sanctions Procedures,[6] debarment (i.e. an exclusion from the current or future bidding process) represents the most relevant one (Manacorda & Grasso, 2018, p. 129).

Within 90 days after the Notice of Sanctions Proceedings has been delivered, the respondent may contest the case by submitting a "Response" to the Sanctions Board, which is a quasi-judicial[7] appellate body whose decisions are final (ibid., p. 74).

The sanctions system has recently assumed crucial importance for understanding how those corrupt practices are perpetrated and as such it has a particular significance for the purposes of this analysis. For many years the documents related to the sanctioning

[5] Of the preliminary inquiries opened in FY17, 34% of complaints received came from World Bank Group staff and 66% of complaints were from non-Bank sources.

[6] The applicable sanctions are: Indefinite or Fixed-Term Debarment; Debarment with Conditional Release; Conditional Nondebarment; Letter of Reprimand; Restitution and Financial Remedies.

[7] The World Bank's Sanctions Board is composed of four non-Bank staff and three Bank staff, and chaired by one of its non-Bank staff members. The presence of a number of external members higher than those of internal should assure a certain level of independence and impartiality.

proceedings were treated as having a classified nature, establishing what has been defined as a "black box" system (Forde, 2012, p. 124). It was not until 2011 that the World Bank finally adopted a policy of transparency, which eventually led in 2012 to the publication of all the decisions of the Sanctions Board on its website. Although such a new level of transparency unquestionably exposes both the Bank and the respondents to increased reputational risks, it has to be regarded as a virtue itself and has to be extremely welcomed. Indeed, it has enhanced legal certainty, allowing the Bank to develop a coherent and accessible body of jurisprudence which could act as an intrinsic safeguard against arbitrary decisions. Also, it has inherently increased the deterrent value of the sanctions imposed by the World Bank and has allowed researchers to carry out a critical analysis of the system (Manacorda & Grasso, 2018, p. 40). If this is true, it has to be highlighted how the World Bank's transparency policy still presents major deficiencies in that only the decisions taken by the Sanctions Board, which is the appeal body to which the proceedings are referred merely upon respondents' decision, are publicly accessible. On the contrary, the first tear decisions taken by the World Bank's Suspension and Debarment Officer, which are considerably superior in numbers, are still shrouded in a veil of secrecy. Serious concerns arise from such a lack of generalised transparency. Besides the ethical issues related to the necessity of assuring that the related World Bank’s documents enter into public domain, and the circumstance that the lack of transparency may affect the effectiveness of the World Bank's regulatory framework in combating corruption in that inappropriate regulations may indirectly encourage corrupt practices (Pasculli, 2017), the current asymmetry could also lead to unintended distortions in the way in which the sanctions system operates or be used instrumentally by respondents. For instance, to avoid reputational damages, multinational enterprises may tend to accept even unfair sanctions recommended at the end of the first tier of the sanctioning procedure or let only the involved executives and not the firm itself appealing the decisions of the Suspension and Debarment Officer before the Sanctions Board.

Case examination of select Sanctions Board's decisions

This part of the chapter will be devoted to a brief examination of nine decisions taken by the World Bank's Sanctions Board over the course of 2017 and 2018. Among the decisions published on the Bank's website in that period (i.e. from decision no 92 to decision no 112), only the cases that were related to corrupt practices have been considered as relevant. In particular, taking into consideration that the purpose of this chapter is to provide a phenomenological investigation rather than a legal one, the analysis will solely focus on the elements of fact emerging from these decisions.

The Consia Consultants case

The case arose in the context of two transportation and infrastructure projects funded by the World Bank: the Strategic Road Infrastructure Project in Indonesia (SRIP) and the

Hanoi Urban Transport Development Project in Vietnam (HUTDP) (*World Bank v Consia Consultants ApS*, para 7).

Over the course of the investigations, it was unveiled that Consia Consultants ApS, which is a Danish company that undertakes international consultancy tasks with transfer of technology to developing and emerging countries, perpetrated several corrupt practices in 2011, 2012 and 2013. In particular, in relation to SRIP, the company, acting through its Regional Manager, gave its local Marketing Agent US$10,000 that then the agent transferred to the public official that was acting as the project manager. As regards the HUTDP, it emerged that Consia Consultants ApS regularly gave funds to the Deputy Director of one of its local sub-consultants under the HUTDP contract, who then delivered at least US$50,000 to Vietnamese public officials involved in the evaluation of the HUTDP (ibid., paras 78-91).

As a result of the perpetrated corrupt practices, as well as other fraudulent conducts, the Danish company was sentenced to a debarment with conditional release with a minimum period of ineligibility of fourteen years beginning from the date of the Sanctions Board's decision (i.e., the 30th of March 2017).

The Dutchmed case

The case arose in the context of the Health Sector Reform Project in the Republic of Romania, which sought to provide more accessible services of increased quality and with improved health outcomes for those requiring maternity and newborn care, emergency medical care and rural primary health care. In 2005, the World Bank and the Republic of Romania entered into a loan agreement to provide the approximate equivalent of US$80 million to support the project. Consequently, in 2008, the Romanian Ministry of Health issued bidding documents for various tenders that were related to the procurement of medical equipment for the emergency services of municipal and local hospitals (Tender 4), for the procurement of laboratory equipment (Tender 8), for the procurement of maternity and neonatal care equipment (Tender 9), and for the procurement of equipment for emergency room, intensive care, and cardiology units (Tender 10). Dutchmed B.V., which is a Dutch company specialised in the supply of hospital and medical equipment, submitted various bids and eventually was awarded four contracts for Tender 4 valued at, respectively, US$1,325,000, €218,750, €297,500, and €247,500; a contract for Tender 8, which was valued at US$4,995,900; two contracts for Tender 9, which were valued at, respectively, US$1,630,500 and €275,000; and two contracts for Tender 10, which were valued at, respectively, US$597,800 and €270,250 (*World Bank v Dutchmed B.V.*, paras 6-10).

As a result of the investigations carried out by the World Bank, it emerged that the Dutch company engaged in corrupt practices by offering and paying the Procurement Advisor, who was a public official that had an actual role in taking and reviewing the procurement decisions and provided feedback to World Bank staff on the bidding documents, commissions that varied from 3% to 5% of the value of each lot won. It was also unveiled that to maintain distance from the Procurement Advisor, Dutchmed B.V.

paid the commissions through an intermediary in the form of consultancy fees, then the intermediary made corresponding payments to the Procurement Advisor. It is not surprising that before the Sanctions Board the representative of the company asserted that Dutchmed B.V. was unaware of the channelling of payments by the intermediary to the Procurement Advisor. However several records gathered by the investigators indicated that the employees of the company knew of the relationship between the two individuals (ibid., paras 40-73).

The investigations also revealed that the company offered and paid for a three-day personal trip to the Netherlands for select members of the project management unit (PMU) within the Ministry, who held responsibilities with respect to the project. From the examination of some emails, it emerged that the trip was considered by the Dutchmed's employees as "a good opportunity to discuss more details" about the contract with the PMU members and that the executives expressly asked to "take into consideration that [the] guests" in the Netherlands consisted of half of the evaluation committee for the "monitoring systems tender." Finally, it emerged that Dutchmed B.V. offered and paid for a trip to Italy for the Project's Financial Coordinator. Evidence indicated that the employees of the company provided the trip on a confidential basis to the public official for his "good cooperation" with Dutchmed in relation to the project (ibid., paras 74-80).

For such a corrupt practice, the Dutch company was sentenced to a debarment with conditional release with a minimum period of ineligibility of fourteen years beginning from the date of the Sanctions Board's decision (i.e., the 2nd of June 2017).

The Ideal Medical Products Engineering case

As it happened in the above-mentioned *Dutchmed case*, this case arose in the context of the Health Sector Reform Project, which aimed at providing more accessible medical services in the Republic of Romania. In 2007, the Romanian Ministry of Health issued bidding documents for the procurement of maternity and neonatal care equipment. Ideal Medical Products Engineering, which is a French company specialised in the execution of hospital projects worldwide, submitted various bids and eventually was awarded four contracts valued at, respectively, €2,698,707, €4,204,245, €207,695, and €2,084,247 (*World Bank v Ideal Medical Products Engineering*, paras 5-6).

During the investigations carried out by the World Bank, it emerged that the company offered and paid the Procurement Advisor, who was functioning as a public official in reviewing procurement decisions, a 4% commission for the tender whose value was €4,204,245. Before the Sanctions Board, the representatives of Ideal Medical Products Engineering acknowledged that the company made such payment but argued that it was made in exchange for the Procurement Advisor's lobbying efforts "to ensure the award of the contract" rather than to perpetrate a corrupt practice. Contemporaneous evidence showed that the Procurement Advisor prepared a report on the technical justification for rejecting the bid of another company, whose bid was approximately €770,000 less than the bid of the Ideal Medical Products Engineering. It was also unveiled that the Procurement Advisor used an alias for purposes of entering into the corrupt agreement with the

company and that the agreement provided that the parties would keep their relationship and the terms of the contract strictly confidential (ibid., paras 20-32).

As a result of the perpetrated corrupt practice, the French company was sentenced to a fixed-term debarment of one year beginning from the date of the Sanctions Board's decision (i.e., the 16th of June 2017).

The Karl Storz case

As it happened in the above-mentioned *Dutchmed case*, this case arose in the context of the Health Sector Reform Project, which aimed at providing more accessible medical services in the Republic of Romania. In 2009, the Romanian Ministry of Health issued bidding documents for the procurement of maternity and neonatal care equipment. Karl Storz GmbH & Co. KG, which is a German global manufacturer and distributor of medical instruments, participated with a bid in the project and successfully entered into a contract with the Republic of Romania having a value of €1,999,988 (*World Bank v Karl Storz GmbH & Co. KG*, paras 5-6).

The World Bank's investigators unveiled that the German company offered and paid a 5% commission for the contract to the Procurement Advisor, who was a temporarily hired consultant of the World Bank whose function was to review as a public official the procurement decisions. It also emerged that to keep such a corrupt relationship as confidential as possible, the company's employees used an intermediary to pay to the Procurement Advisor (ibid., paras 22-29).

As a result of the perpetrated corrupt practice, the German company was sentenced to a fixed-term debarment of two years beginning from the date of the Sanctions Board's decision (i.e., the 21st of July 2017).

The Olive Health Care India case

The case arose in the context of the Bangladesh Health Sector Development Program, which aimed at enabling Bangladesh to strengthen its health systems and improve its health services, particularly for the poor. In order to achieve such an objective, in 2011, the World Bank entered into a financing agreement with the People's Republic of Bangladesh for a credit of approximately US$359 million. As a result, the Bangladeshi government established an implementation unit for the project (PIU), which issued bidding documents for a contract to supply capsules of vitamin A. In early 2012, Olive Health Care India, which is a pharmaceutical company, submitted a bid for the contract through a company's local agent. In June 2012, Olive Health Care India won the bid and signed the contract, valued at US$1,899,000 (*World Bank v Olive Health Care India*, paras 7-9).

Thanks to the investigations conducted by the World Bank, it was revealed that, although the local agent was formally entitled to receive a commission of US$1,000 for the work related to the bid and its execution, Olive Health Care agreed to pay a commission of 10% of the Contract's value to the Agent and ultimately paid the agent at least 7.5% of the

Contract's value, which amounted to about US$140,000. It also emerged that the company's Manager requested assurance that Olive Health Care would win the contract "at any possible cost," that was convinced that the local agent had "contacts" among PIU personnel, and believed that a portion of the agent's commission would be paid to government officials to help the Olive Health Care win the contract (ibid., paras 55 and 57).

Consequently, the Indian pharmaceutical company was sentenced to a debarment with conditional release with a minimum period of ineligibility of ten years and six months beginning from the date of the Sanctions Board's decision (i.e., the 21st of July 2017).

The Angelique International case

The case relates to four energy sector projects, three of which were carried out in the Federal Democratic Republic of Ethiopia and one in the Federal Democratic Republic of Nepal. Angelique International Limited, an Indian engineering procurement construction company, submitted three separate bids for contracts under the Ethiopian projects and, through the establishment of a joint venture with a local partner, submitted a joint bid on a contract under the Nepalese project (*World Bank v Angelique International Limited*, paras 5-7).

The World Bank's investigations unveiled that, in relation to the Ethiopian projects, the company paid a bribe of approximately US$26,258 to the Procurement Specialist, who was a public official that reviewed bids and participated in the selection processes for ·all of the Ethiopia Contracts. As regards the Nepalese project, it emerged that the Respondent agreed to make a payment of approximately US$95,000 to the local partner to pass along the Nepal Project Implementation Agency so to influence the public officials in the selection process for the Nepal Contract in the joint venture's favour. Consistent with the alleged corrupt arrangement to influence the procurement process, the joint venture won the Nepalese contract. Interestingly, the investigations also revealed that although the Nepalese partner was formally assigned certain tasks and approximately 25% of the work under the contract, in reality, it served as a mere agent and, as specified in a separate agreement, the Indian company was supposed to perform all of the necessary work (ibid., paras 34-52).

As a result of the perpetration of such corrupt practices, Angelique International Limited was sentenced to a debarment with conditional release with a minimum period of ineligibility of four years and six months beginning from the date of the Sanctions Board's decision (i.e., the 18th of December 2017).

The Shailung Construction case

The case arose in the context of the Nepal-India Electricity Transmission and Trade Project, which sought to facilitate electricity trade between the Republic of India and the Federal Democratic Republic of Nepal and to increase the supply of electricity in the Nepalese territory. Specifically, the Federal Democratic Republic of Nepal and the World

Bank entered into a financing agreement for the equivalent of US$99 million to finance the project. As a result, in 2011, the local government established the project implementation unit (PIU), which issued the relevant bidding documents. A foreign company (whose name has not been disclosed by the Bank) and the Nepalese Shailung Construction Co. Pvt. Ltd. created a joint venture and submitted a bid for the contract on 29 December 2011 (*World Bank v Shailung Construction Co. Pvt. Ltd.*, para 5).

Although the bid approval process reached the final stages before the PIU, the process had been delayed. Specifically, it emerged that although the bid evaluation committee for the contract found the joint venture's bid to be substantially responsive and the lowest evaluated, it declined to take further action pending clarifications from the joint venture on some aspects of its bid. Not surprisingly, immediately after the payment of the bribe, the PIU gave the green light and the joint venture signed the contract, which formally identified the Nepalese firm as the local partner (ibid., para 28).

During the investigations conducted by the World Bank, it emerged that Shailung Construction Co. Pvt. Ltd. engaged in corrupt practices by soliciting from the joint venture foreign partner an improper payment to pass along to public officials in order to influence the award of the contract, which had been unduly delayed. In practice, the Nepalese company acted as a "go-between" for the joint venture foreign partner and the domestic public officials, and arranged the payment of a bribe of approximately US$190,000. Interestingly, in the text of an email recovered by the investigators, the Vice President of the foreign company referred to the local partner calling it "our agent" and specified that the payment was necessary to "ensure that by this weekend the contract goes for approval" (ibid., para 23).

As a result of the perpetration of such a corrupt practice, the Nepalese firm was sentenced to a debarment with conditional release with a minimum period of ineligibility of two years and six months beginning from the date of the Sanctions Board's decision (i.e., the 18th of April 2017).

The Hifab International case

The case arose in the context of the Road Sector Project in the Lao People's Democratic Republic, which sought to improve road services on two main national corridors and the provincial road network, to rehabilitate roads damaged by a typhoon, and to establish a contingency fund for quick disaster response in the road sector. The Project, through which the World Bank provided Laos with approximately US$49 million, became effective in 2010 and closed in 2017. In 2012, the project implementation unit (PIU) established in Laos by the government issued a request for proposals for a contract for consulting services for sector planning and management. Hifab International AB, a Swedish firm that provides professional engineering services worldwide, in association with a local partner, submitted a proposal and was awarded a contract valued at US$460,300 (*World Bank v Hifab International AB*, para 4).

After the investigations carried out by the World Bank, it emerged that, in response to a solicitation by a PIU's Deputy Director-General, the Swedish company engaged in corrupt

practices by offering and providing to the public official a vehicle worth approximately US$38,800 in order to influence the PIU's evaluation in the firm's favour. The vehicle was purchased by Hifab International AB through the local partner and transferred to the PIU after the conclusion of the contract, for the personal benefit of the Deputy Director (ibid., para 11).

As it was unveiled by the following excerpts from an interview conducted by the World Bank's investigators, the PIU's Deputy Director General exerted an intense pressure on the firm's management: "[the Deputy Director] wanted a vehicle and there didn't seem to be any way around it .... [the Deputy Director] put the hard word on [the company's Project Manager] and so that's what she did" (ibid., para 31).

For such a corrupt practice, the Swedish company was sentenced to a debarment with conditional release with a minimum period of ineligibility of three years and one month beginning from the date of the Sanctions Board's decision (i.e., the 13th of April 2018).

The Witteveen+Bos Raadgevende Ingenieurs case

The case arose in the context of the Integrated Persistent Organic Pollutants Management Project in the Republic of the Philippines. The variety of chemical compounds that had been released for years into water from industrial and agricultural activities and urban wastes in the Philippines resulted in the contamination of land resources (Santiago & Kwan, 2015, p. 169). Consequently, the project sought to assist the Philippines in minimising the risk of human and environmental exposure to Persistent Organic Pollutants (POPs)[8] by strengthening its regulatory and monitoring framework, and improving capacity for reduction of exposure to POPs in contaminated sites (*World Bank v Witteveen+Bos Raadgevende Ingenieurs B.V.*, para 5).

In order to carry out the project, the World Bank, acting as implementing agency of the Global Environment Facility,[9] entered into a trust fund grant agreement with the Republic of the Philippines and accepted to provide US$8.64 million. As a result, an implementation unit for the project (PIU) was established in the Philippines, which issued several requests for proposals for the contracts needed to run the project. Witteveen+Bos Raadgevende Ingenieurs B.V., which is a Dutch company that provides consultancy and engineering services worldwide *inter alia* in the field of the environment, entered in a consortium with two other firms in order to participate in several related bids. It emerged that the corrupt practice began with a solicitation made by the director of the PIU, who approached the local partner of the consortium and requested that the consortium hire two staff members to assist the PIU with its public relations efforts. The local partner relayed the request to the Dutch company's project manager, who entered into negotiations with the government official and made a counter-offer to have the local partner hire one staff member to work partly for the consortium and partly for the PIU. Such a proposal was made after that the

[8] Persistent Organic Pollutants are chemicals that are harmful to living organisms and are resistant to degradation.

[9] The Global Environment Facility is an international organisation that was established on the eve of the 1992 Rio Earth Summit to help tackle the most pressing environmental issues at the global level.

PIU Director was informed that the consortium had just submitted a proposal for a contract and was going to submit an additional expression of interest for another contract (ibid., para 13).

During the sanction process, the Dutch firm defended itself arguing that its project manager only tentatively considered the PIU's request without actually expressing readiness to accede to it, and that making a formal offer to hire staff for the PIU would have required the firm's internal clearance and approval, which the project manager never sought (ibid., para 16).

In its decision, the Sanctions Board clarified that the term "offer," as used in the applicable definitions of corrupt practice, included both a proactive offer of payment and a promise or commitment to pay a bribe when solicited. It further specified that a "thing of value" for purposes of a corrupt practice need not be in the form of money, as it can instead be some other type of benefit or advantage, such as a respondent's hiring of certain individuals (ibid., para 28). As regards the intent to influence improperly the action of a public official, the Sanctions Board found that it was more likely than not that such an influence was intentionally exerted because the project manager knew that the PIU Director was the officer-in-charge of the PIU's foreign assisted special project office, which provided oversight, advisory, procurement, and fiduciary management for the project, and that in the negotiations was constantly stressed that the consortium had projects that had been tendered or were in the pipeline (ibid., paras 35-37).

As a result, the Dutch company was sentenced to a debarment with conditional release with a minimum period of ineligibility of nine months beginning from the date of the Sanctions Board's decision (i.e., the 30th of April 2018).

Conclusion

The aim of this chapter has been to assess the importance of adopting a regime of transparency in the supranational sanctions systems and to analyse how the phenomenon of corruption takes place in World Bank-financed development projects through a brief examination of the facts as emerged from select Sanctions Board's decisions. The relevance of such an analysis is connected to the circumstance that we live in an era of unprecedented scrutiny of the relationship between corporations and financial crime (Ryder, 2018). As a matter of fact, corrupt practices perpetrated by multinational enterprises have the potential to disrupt the economy and generate inequality, especially where they take place in developing countries.

In that regard, one of the most significant characteristics of the phenomenon of corruption in the World Bank-financed projects is that it adversely affects programmes that aim at promoting development, reducing poverty and, in general, assisting the most disadvantaged social groups. As it emerged from the case analysis, where corruption affects the Bank's projects it risks to undermine meritorious aims such as the reduction of the risk of human and environmental exposure to pollution, the rehabilitation of infrastructures damaged by natural disasters, the supply of electricity in remote areas, the strengthening of domestic health systems particularly for the poor. Corruption dooms such projects from the outset through both cost overruns and the selection of low-quality

providers of goods or services. When corruption distorts development projects, loans intended to promote development may simply lead a country further into debt without providing any much-needed economic development. Such a characteristic, which connotes the phenomenon of corruption in the World Bank-financed projects with a terribly negative value, makes the necessity to fight against such criminal actions even more pressing than within the ordinary business environment. The following statement made by the World Bank Group President Jim Yong Kim, which is included in the INT annual report for the fiscal year 2017, is emblematic of the special effort that the multinational development bank is making to raise public awareness of this specific issue:

> "The World Bank Group has long been a champion of the anti-corruption agenda. Corruption is tantamount to stealing from the poor, and anti-corruption efforts are critical for sustainable development. Fighting corruption is a global issue that resonates with citizens around the world." (World Bank, 2017, p. 5).

From the analysis of the cases, it also emerged that the critical stage where the procurement process appears to be most vulnerable to corruption is the final approval phase. As *the Shailung Construction case* clearly demonstrated, legal entities that participate in a public procurement become vulnerable to undue solicitation, especially where their bid has passed the selection process, and it seems that the company will enter into the contract with the local government. At that very moment, the public authorities may intentionally and unduly delay the approval process on the ground of minor or irrelevant issues so to exert on the company, directly or indirectly, a pressure to pay bribes or offer other undue advantages so to obtain the final green light. The circumstances that the company knows it has already beaten its competitors and that its employees have already spent a considerable amount of time and resources to participate in the public procurement process are all elements that amplify the unduly pressure exerted on the firm through such an unreasonable delay. This awareness should be used to fight actively against corruption enhancing the screening processes at the very moment in which such phase is reached.

Another element that clearly surfaced from the examination of the Sanctions Board's decisions is that, in the vast majority of cases, the phenomenon of corruption involves a multinational enterprise headquartered in an industrialised country which is involved in a project to be carried out in a developing country. In order to establish a connection with the local authority in charge of the selection process, the firms use the services of a local partner which becomes the contact point between the government officials and the foreign company. The "services" offered by such local partners appear to be essential for the perpetration of the corrupt practices. As a result, the anti-corruption strategies of the World Bank should devote special attention to the relationship between the corporation and its local partner, which does not usually perform any significant commercial function besides the establishment of a connection with the domestic public officials. Moreover, as it was unveiled in the *Angelique International case*, in order to dissimulate the fact that the local agent does not carry out any valid business activity, the foreign firms may create joint

venture agreements with the local partner's companies under which they distribute the work to be carried out for participating in the public procurement only on paper.

As it emerged from all the cases that were related to the Health Sector Reform Project in the Republic of Romania, even in the absence of a local partner, companies tend to use intermediaries for the payment of the bribe. Such a choice is made to put distance between the company and the involved public official and keep confidentiality. The presence of an intermediary can also be instrumentally used as a way to reduce corporate accountability adding a supplementary layer of complexity to the illicit transaction. In that regard, the circumstances of the *Dutchmed case* are emblematic of such a phenomenon. As a matter of fact, in that case, the company paid a sum of money to the intermediary in the form of consultancy fees and then the intermediary made corresponding payments to the public official so that during the sanctions process the firm affirmed that it was unaware of the latter payments.

Finally, the analysis of the cases has illustrated what kind of financial or other advantages are typically used by corporations to influence the action of a public official in the selection process or contract execution. On several occasions, the public officials were bribed through the direct payment of a sum of money. Although the amount of the bribe varied, it emerged that its average amount corresponded to 4% of the overall value of the contract and, as if it were the levying of tax, it was paid to the public official for each contract obtained by the company even where the various contracts were related to the same tender. However, the case studies revealed that it is not uncommon to perpetrate corrupt practices by offering a "thing of value" rather than directly a sum of money. For instance, in the *Hifab International case* the involved public official received an expensive vehicle from the company, whereas in the *Witteveen+Bos Raadgevende Ingenieurs* the public officials required the firms' hiring of certain individuals. It also emerged that another way used to improperly influence the action of relevant public officials consists in the offering of trips abroad whose expenses are covered by the bidding company. However, it appears that such a less direct form of bribe is used to influence public officials that, although involved in the evaluation procedure, does not have a specific decision-making authority.

Although the scope of the analysis carried out for the purposes of this chapter has to be necessarily limited, the examination of those cases has offered a vivid and realistic depiction of the ways in which corruption, as a criminal phenomenon, operates within World Bank’s projects. Such insights can represent a starting point for future research activities aiming to develop anti-corruption solutions through the assessment of the criminal phenomenon.

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