

February 1, 2011

Via Electronic Mail

Mr. Robert B. Zoellick
President
The World Bank Group
1818 H Street, N.W.
Washington, D.C. 20433

Re: Thursday's Board Meeting and the World Bank Inspection Panel

Dear President Zoellick:

We are writing to raise our concerns regarding current threats to the independence and effectiveness of the World Bank Inspection Panel, and to ask you to take all appropriate steps to ensure that the Panel's role is not weakened now or in the future. As you know, since its creation the Panel has served as a model for accountability at all major international financial institutions. In recent years, the Panel has operated reasonably well under a delicate political compromise worked out and codified in the original Board Resolution creating the Panel and several subsequent "clarifications". That political compromise is now being disrupted by steps to allow the General Counsel to second-guess Panel recommendations regarding eligibility in particular cases.

From what we understand, the Board of Directors is scheduled to consider three Panel reports this Thursday, February 3, 2011. One of the Executive Directors reportedly asked the Bank's General Counsel to opine on the Panel's findings of eligibility regarding one of those reports, which the General Counsel has apparently done.

Such an incursion into the Panel process is contrary to the practice since creation of the Panel. It will also involve the General Counsel in a direct conflict of interest and will seriously undermine the independence of the Panel process. As former General Counsel Ibrahim Shihata explained in describing the first time when the Executive Directors asked a General Counsel to opine on the Resolution creating the Panel:

I made it clear that I could only explain ... what the Resolution requires from the Panel in the abstract. I categorically stated that it would not be appropriate for me to pass any judgment on a specific recommendation by the Panel as 'only the Board of Executive Directors' is to pass judgment on the Panel's report. This position has been later confirmed by the Executive Directors' 'Clarification of Certain Aspects of the Resolution' issued in 1996, which indicates that the Panel will apply the Resolution as it understands it, subject to the Board's review.¹

¹ See Ibrahim Shihata, *The World Bank Inspection Panel: In Practice*, page 338).

This position was well considered and has been followed ever since. It reflects the unique nature of the Inspection Panel as a mechanism that reports directly to the Board in cases implicating Bank Management's potential non-compliance. In such a context, the Office of the General Counsel is perceived to have a conflict of interest given that lawyers working for that Office also provide legal support to Management in preparing their response to any claim. No informal or formal "walls" can protect against this perception if the General Counsel is allowed to opine on specific Panel recommendations.

As a result, we hope that any submission by the General Counsel be viewed as simply part of Management's response to the claim and neither considered nor accepted by the Board as a formal Legal Opinion. If the Board considers such an Opinion during the meeting on Thursday, this would seriously undermine the Panel's independence and could damage the ability of the World Bank Group to secure support from the many governments around the world who value the institution's accountability.

We believe that your personal attention to this matter is necessary to avoid a major controversy that will spark unnecessary criticism of the Bank and raise serious questions about the Bank's willingness to embrace a transparent and independent accountability mechanism.

We are available to discuss this issue at your earliest convenience.

Sincerely,

David B. Hunter, Esq.
Professor of Law
American University, Washington College of Law
202-274-4415

Chad Dobson
Executive Director
Bank Information Center
202-624-0623

Lori Udall
President
Montpelier Consulting, LLC
540-220-9191

Anne Perrault, Esq.
Senior Attorney
Center for International Environmental Law
202-785-8700

Natalie Bridgeman Fields, Esq.

Executive Director
Accountability Counsel
415-412-6704

cc: Congressman Barney Frank (via email)
Senator Richard Lugar (via email)